

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
Debtor. . September 15, 2014
8:30 a.m.
.

CONTINUED TRIAL RE. OBJECTIONS TO CONFIRMATION OF
CHAPTER 9 PLAN; (#7061) MOTION/THE DETROIT
RETIREMENT SYSTEMS' MOTION TO EXCLUDE PORTIONS OF
MARTHA KOPACZ'S TESTIMONY FILED BY CREDITORS
GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT,
POLICE AND FIRE RETIREMENT SYSTEM OF THE CITY OF DETROIT;
(#7003) CONCURRENCE/FINANCIAL GUARANTY INSURANCE COMPANY'S
JOINDER IN SYNCORA'S MOTION TO EXCLUDE CERTAIN OF THE
EXPERT OPINIONS OF MARTHA KOPACZ UNDER FEDERAL RULE
OF EVIDENCE 702 FILED BY CREDITOR FINANCIAL GUARANTY
INSURANCE COMPANY; (#6999) MOTION TO EXCLUDE CERTAIN OF
THE EXPERT OPINIONS OF MARTHA KOPACZ UNDER FEDERAL
RULE OF EVIDENCE 702 FILED BY INTERESTED PARTIES SYNCORA
CAPITAL ASSURANCE, INC., SYNCORA GUARANTEE, INC.
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE CLERK: Calling the matter of 13-53846, City of
2 Detroit, Michigan.

3 THE COURT: Good morning. Looks like everyone is
4 here. Go ahead, sir.

5 MR. HEIMAN: Good morning, your Honor. David
6 Heiman, Jones Day, on behalf of the city, and I'm very
7 pleased this morning. Once again, I've said this, but to do
8 something -- to announce a development that we probably had
9 concluded would not happen has happened today. I'm pleased
10 and privileged to report that more than a year of litigation
11 between the city and Syncora has now come to an end, and we
12 have settled our dispute. I want to make it clear that the
13 settlement does not resolve the Class 9 treatment. FGIC will
14 continue to object, as far as we understand it. They can
15 speak for themselves today, but efforts to reach a settlement
16 with them at least thus far have not been successful.
17 However, the settlement, in our minds, a very favorable one
18 to the city, is a very significant step in the city's efforts
19 to move swiftly through this confirmation process and to exit
20 Chapter 9 as soon as possible and to return the city to its
21 citizens.

22 With that in mind and maybe a little bit out of
23 order, I'd like to thank some people here if I may because
24 this is the reflection, manifestation of a huge amount of
25 work by a lot of people, so I'd like to first thank the

1 Court, who has been encouraging of settlement and also
2 provided the time for the parties to actually work together
3 to settle. And as your Honor knows, the mediators have been
4 incredibly instrumental in helping the parties find common
5 ground, the mediators in this particular instance being
6 Judges Rosen and Perris and Eugene Driker. So I want to
7 thank them for just another example of persistence and
8 tireless efforts on their part, and I think, as your Honor
9 knows, I think it's hard to know where we'd be in this case
10 without the support of the mediators throughout this process.

11 I'd like to thank the parties themselves, both the
12 city and Syncora, who have laid down their swords after much
13 fighting. It takes a lot of emotional and, you know, mature
14 effort to do that. In particular, I'd like to thank the
15 advisors, professionals on both sides. Again, after being
16 passionate adversaries for more than a year in litigation,
17 today those professionals are now acting in concert in
18 support of the city.

19 Just a word or two about the plan -- I'm sorry --
20 the settlement, which will become part of the plan -- Ms.
21 Ball will be more specific in a moment, but I'd like to do
22 just a little bit of an overview. First, and of great value
23 to the city, is that Syncora will be withdrawing all
24 objections across the board in connection with the plan or
25 other aspects and appeals that may be outside of the plan,

1 and they will become a supporter of the plan as well as a
2 supporter of continuing litigation relating to the COPs
3 causes of action that are existing today in front of the
4 Court. The plan itself provides for a 13.7-percent recovery
5 on the Syncora-related claims both to be paid by virtue of a
6 portion of the B notes -- 60 percent of the reserve on the B
7 notes will go to Syncora -- and other consideration that Ms.
8 Ball will detail.

9 The other part of the settlement is to establish a
10 commercial relationship between Syncora and the city for the
11 long term regarding development of certain assets that the
12 city owns or will transfer to a Syncora subsidiary, and the
13 city and Syncora will work together in the development of
14 those properties. So that part of the settlement will be
15 reflected in the implementation section of the plan, and
16 Ms. Lennox can address more specifics on that if you want, so
17 we have two parts to the settlement. One part is claim
18 treatment, and the other is related to the new commercial
19 relationship.

20 What I'd like to do today is have various of our
21 lawyers plus Ryan Bennett speak to specifics of the
22 settlement or procedures, so -- and in this case, it does
23 take a village to get this done, so I would have Ms. Ball
24 address the specifics of the settlement, Mr. Bennett comment
25 to the extent he feels necessary, Ms. Lennox report to the

1 Court on where we stand on the documentation that reflects
2 the settlement and the filing of that, Mr. Miller on certain
3 commitments to the Retirees' Committee, and Mr. Cullen on
4 what the city sees as an appropriate procedure for continuing
5 the confirmation trial. I apologize for all of that, but
6 it's -- as I say, it was a complicated settlement and
7 requires a lot of thought and presentation to the Court.

8 As to the status of the agreement, I want to make it
9 clear we have an agreement. The last time we saw you, it was
10 an agreement in principle, and everybody went to work until
11 the wee hours this morning to come up with what is an
12 agreement. There are aspects of the agreement that we still
13 need to work on, but we're agreed on how to do that. So not
14 surprisingly, when there are transfers of properties and
15 diligence required and planning for development of those
16 properties, there is -- there are a little bit of moving
17 targets on which properties and so forth, so the one tag area
18 of the settlement that we need to continue to work on but is
19 not going to come back before the Court is with respect to
20 two properties, so late last night the city discovered
21 certain parcels previously included in the development
22 agreement that could not be conveyed to Syncora. As a
23 result, the city agrees that by the close of business on
24 Tuesday, September 16, 2014, the city will provide Syncora
25 with properties that represent reasonably equivalent value

1 consistent with that development scheme or their development
2 scheme that are reasonably accepted to Syncora. They may
3 actually conceivably be the same properties or replacement
4 properties. The parties have agreed that we can fix this one
5 tag issue hopefully with relative ease within the next 48
6 hours and probably sooner.

7 As to the documentation that is necessary for this,
8 Ms. Lennox will report to you on it, but as far as we're
9 concerned and I think as far as Kirkland & Ellis is
10 concerned, we're pretty much done with that, still, you know,
11 some wordsmithing, I suppose.

12 One last point. We have been working -- well, since
13 last Thursday with the Retirees' Committee and the holders of
14 the LTGOs to discuss how they view the impact of this
15 settlement on them, and we have made a lot of progress in
16 those discussions and expect to continue those discussions
17 this morning and are confident that we can conclude those
18 discussions, so we will need to do that before we file the
19 documents. Thank you, your Honor.

20 MS. BALL: Good morning, your Honor. Corinne Ball
21 of Jones Day for the city. Perhaps we should start with just
22 a review of the context that brings us here. As your Honor
23 is aware, there are many relationships between Syncora and
24 the city other than Syncora's role as COP -- an insurer of
25 the certificates of participation. Syncora is a swap

1 insurer. Syncora has insured the unlimited tax general
2 obligation bonds. Syncora is an insurer of the certificates
3 of participation. Syncora is a holder of the certificates of
4 participation. And in addition to that, Syncora, through its
5 subsidiary, American Roads and Pike Pointe, is a lessee of
6 the city on the Windsor Tunnel and, as a consequence of that,
7 is also present in surrounding buildings as a lessee at the
8 terminus of the tunnel on the Detroit side. In fact, it has
9 some hundred employees in Detroit in its headquarters in that
10 location.

11 Your Honor, with that, perhaps I'd like to walk you
12 through, with your permission, the elements of the
13 settlement, and we have -- if your Honor would like one, I
14 have a PowerPoint, if I may approach.

15 THE COURT: Yes.

16 MS. BALL: Perhaps we can walk through it. Your
17 Honor, this is a global settlement and a global resolution of
18 the multiple roles and relationships that Syncora has with
19 the city and has had over the past year in this courtroom.
20 If we could go through it, it is a -- we are entering into a
21 development agreement, which Mr. Heiman described, which
22 relates to properties, in essence, near the terminus of the
23 Windsor Tunnel. We are amending the lease for the Windsor
24 Tunnel and assuming it under the plan. Your Honor may or may
25 not be aware, but the lessee of that tunnel went through its

1 own bankruptcy in parallel with the city's bankruptcy, and
2 Syncora has, in fact, taken over that role as of September
3 2013, so they're new to the city, and we needed a new and
4 better relationship. We're also settling Syncora's COPs
5 situation, and we're resolving all litigation related to the
6 Chapter 9 whether in this court, your Honor, or on the
7 appellate levels. And that, of course, your Honor, will also
8 resolve their secured claims -- their asserted secured
9 claims, which your Honor may recall were one of the very
10 first disagreements that the city and Syncora had.

11 On the development agreement, the city and a
12 subsidiary of Syncora called Pike Pointe will enter into a
13 development agreement. Under the agreement, the developer is
14 granted an option to acquire certain specified properties
15 that will last five years from the effective date subject to
16 extension in certain instances. Prior to the exercise of the
17 option, the developer may undertake due diligence of the
18 properties. Once the option is exercised, the developer must
19 develop the applicable property into parking facilities,
20 residential housing, commercial retail space, and any other
21 use suitable for location consistent with the city's urban
22 planning policies and the city's comprehensive development
23 plan. The developer will have 15 months to begin developing
24 the property or else it will revert to the city. The
25 developer must also complete construction within three years

1 and three months of exercising its option. The city and the
2 Syncora subsidiary will also enter into an option to enter
3 into a 30-year concession with respect to the Grand Circus
4 garage including an obligation to invest 13.5 million in
5 capital expenditures during the first five years of that
6 long-term leasing arrangement for that parking garage.

7 With respect to the tunnel lease, the city will
8 extend and assume the lease as amended of the Detroit-Windsor
9 Tunnel and the related properties which I mentioned earlier,
10 your Honor, surrounding the terminus of the tunnel. The
11 amended lease will extend the term from November 2020 to
12 December 2040. The amended lease will contain additional
13 reporting requirements on the part of the tunnel company, and
14 the city will only be limited in its ability to disclose that
15 information in very certain specific circumstances, which
16 compares to today, which it is a fairly opaque relationship
17 from the city's point of view. The tunnel company will
18 maintain the city portion of the tunnel to the same standard
19 as the Windsor side. The amended lease will also allow the
20 tunnel company to offset certain capital expenditures made to
21 improve the tunnel against the tunnel's rent obligations.
22 During the initial term of the lease, your Honor, which is
23 the current lease, which runs through 2020, the tunnel may
24 credit capital expenditures against its rent up to the full
25 amount of the rent due during this period. During the

1 extension term, your Honor, they may credit capital
2 expenditures against 75 percent of the annual rent subject to
3 certain limitations. In all, the tunnel company may not
4 credit more than eight million of capital expenditures
5 against rent during the extension term, but in all, your
6 Honor, it represents a substantial commitment to improve the
7 condition and safety of the tunnel. The amendment
8 anticipates and does not preclude a new joint operating
9 agreement with respect to the Windsor portion of the tunnel
10 and a new -- potentially new intergovernmental authority
11 between Detroit and Windsor to allow the tunnel to be
12 operated in an integrated manner. Your Honor, that's
13 providing for the future.

14 With respect to the settlement of the COPs held and
15 insured by Syncora, your Honor, the plan provides for the
16 creation of a litigation trust, and the remaining interest in
17 that trust I may remind your Honor belongs to other creditors
18 of the city, does not revert to the city. The litigation
19 trust established under the plan will purchase Syncora's COPs
20 and COPs claims in exchange for new B notes. Your Honor,
21 that's the nomenclature that has been in the plan to describe
22 the notes issued to the various unsecured classes under the
23 plan, the OPEB class, Class 12, general unsecured class,
24 Class 14, and the COPs class, Class 19. It also provides for
25 an enhancement for Class 9 consisting of new C notes and

1 something that we call settlement credits. That, your Honor,
2 is what, in essence, leads us to describe the Class 9
3 treatment as being enhanced to provide 13.9 percent as
4 opposed to the original estimates of 10 percent on account of
5 Class 9. As a settling party, Syncora will be included as an
6 exculpated party under the plan of adjustment subject to
7 certain agreed carveouts. Importantly, your Honor, this
8 settlement offer with the enhanced portion of the C notes and
9 the settlement credits will be made available to any COP
10 claimant that opts into the settlement prior to the effective
11 date on the plan of adjustment. The COP claimants that do
12 not participate in the settlement will receive the treatment
13 previously set forth in the sixth amended plan. Notably,
14 your Honor, no enhancement with the C notes and the
15 settlement credits unless the COP claimants opt in.

16 Your Honor, if we move ahead, on the effective date,
17 Syncora will receive 23.5 million in new B notes. Your
18 Honor, that number refers to the face amount, and that number
19 represents 60.358 percent of the total COP claims asserted by
20 Syncora. If we move ahead, the enhancement on the settlement
21 of the COPs is on the effective date Syncora will receive
22 approximately 21.3 million in new unsecured five-percent C
23 notes due in 2026. These new 12-year C notes bear interest
24 at the rate of five percent. Through the operation of the
25 parking system in the city, the city will segregate certain

1 parking revenues each year until monies sufficient to meet
2 the annual debt service on these new C notes is set aside.
3 The notes are unsecured, and, though due in 2026, they must
4 be prepaid in the event of certain parking asset disposition
5 should the city decide to sell or outsource its parking, and
6 they may be prepaid at the city's option at any time without
7 premium or penalty.

8 I think, your Honor, if we move ahead to the
9 settlement credits, alternately called vouchers, and to some
10 others almost green stamps, I think was the phrase that we
11 used -- on the effective date, Syncora will receive 6.25
12 million in Class 9 settlement credits. What are they?
13 Settlement credits may be applied towards the purchase of
14 eligible city assets. Eligible city assets include the Joe
15 Louis Arena post-demolition in 2017 when it's available.
16 Should the city pursue a proposal for its parking assets,
17 that's an eligible asset. And real property located -- your
18 Honor, it's real property within three miles of the tunnel
19 terminus, again, back to their current presence. To apply
20 the credits, the owner must participate in the normal
21 procurement or auction process run by the city. It has to be
22 the final party selected in that procurement or auction
23 process and otherwise satisfy all the requirements.
24 Settlement credits can only be used for 50 percent of the
25 purchase price of an eligible asset. Importantly, your

1 Honor, these settlement credits can be freely assigned or
2 transferred. We thought that was an important feature
3 particularly for those COPs holders who may not have a
4 relationship with the City of Detroit on an ongoing basis.

5 Your Honor, if we move to the litigation front,
6 whether it's the swaps, the COPs, the UTGOs, or the appeals,
7 the many appeals, Syncora will now support the plan, and I
8 think it has already filed some withdrawal of its objections,
9 but it will promptly withdraw all objections to confirmation
10 of the city's plan of adjustment, which will be, your Honor,
11 at this time without prejudice but obviously will mature as
12 we move forward through confirmation. Subject to definitive
13 documentation on the confirmation date of the plan, Syncora
14 will withdraw all plan objections with prejudice. Syncora's
15 appeals will be held in abeyance, your Honor, as we plan to
16 file a joint motion to stay them until the process is
17 complete and the plan becomes effective at which point such
18 appeals will be withdrawn with prejudice. And, your Honor,
19 among others, it includes the public lighting authority
20 appeal, the post-petition financing appeal, the automatic
21 stay appeal, the swaps settlement appeal, the mediation
22 appeal, and I think there may be a few I've missed. In
23 satisfaction of its asserted secured claims relating to the
24 collateral account, your Honor may recall, that was
25 associated with the casino revenues and other litigation

1 claims, Syncora will receive \$5 million. I think Mr. Cullen
2 will assist the Court, but we anticipate there will be
3 further trial process motions and exhibits which will accord
4 and reinforce Syncora's agreement to support the plan. With
5 that, your Honor, I'm happy to answer any questions you may
6 have.

7 THE COURT: Can we go back to Slide 5, please?

8 MS. BALL: Yes, sir.

9 THE COURT: For other COP claimants who opt in, what
10 do they give up by opting in, and what does the city get?

11 MS. BALL: Your Honor, they will be selling their
12 COPs claims to the litigation trust, and the city would be
13 distributing not only the B notes, which were described in
14 the existing sixth amended plan, they will also be getting
15 their share of the enhancement, the new C notes and the
16 settlement credits.

17 THE COURT: Thank you.

18 MS. BALL: Anything else, your Honor?

19 THE COURT: No.

20 MS. BALL: Thank you. With that I would defer to
21 Ms. Lennox as to how we're working this through the plan.

22 MR. BENNETT: Good morning, your Honor. Ryan
23 Bennett of Kirkland & Ellis on behalf of Syncora. I'm very
24 glad to be standing here before you today, your Honor. This
25 is a big day for Syncora and a big day for the City of

1 Detroit. We'd like to thank the Court, the Court's staff for
2 the time and patience over the past many months and thank the
3 mediators for their assistance, particularly over the past
4 three weeks as we've worked through what has been a very
5 complicated and creative resolution to Syncora's unique
6 relationship with the City of Detroit. Ms. Ball and Mr.
7 Heiman captured the settlement accurately. Syncora will
8 shortly be withdrawing its objections to the plan, its
9 various motions that are pending before the Court without
10 prejudice to our ability to renew our litigation should the
11 definitive documentation not be reasonably acceptable to the
12 city and Syncora and the plan not be confirmed, but we
13 expect, as Mr. Heiman highlighted, that we are substantially
14 done. We know we are substantially done and that that will
15 be coming shortly. Our appeals, likewise, will be held in
16 abeyance, as Ms. Ball pointed out, and dismissed with
17 prejudice upon the effective date. Your Honor, that's all I
18 have, fortunately. Thank you very much.

19 THE COURT: Thank you.

20 MS. LENNOX: Good morning, your Honor. With respect
21 to the plan process, as these developments with respect to
22 the settlement that Ms. Ball outlined have progressed, the
23 draft of the seventh amended plan has kept pace, so that is
24 in fairly good shape. We have, I think, a couple of things
25 that we're hoping to iron out with some other parties today.

1 Our goal is to file that plan today, you know, subject to
2 ironing out the differences, but we are in good shape on
3 that, your Honor.

4 MR. HEIMAN: Your Honor, before we call on Mr.
5 Cullen, I did mention that we would be hearing from Evan
6 Miller today, and -- oh, he was hiding, and I don't blame him
7 because he's a target for a lot of people.

8 MR. MILLER: Thank you for those kind words. Good
9 morning, your Honor. Evan Miller, Jones Day, for the City of
10 Detroit. I wanted to briefly talk about an issue in
11 connection with the Class 12, the so-called OPEB settlement.
12 Certain issues have arisen in connection with the -- excuse
13 me -- implementation and start-up of the so-called VEBA
14 trusts. Those would be the trusts that pursuant to the
15 settlement would be providing and paying for retiree health
16 insurance. And I want to advise the Court that the City of
17 Detroit commits to negotiate in good faith a resolution of
18 all of those issues relating to the start-up of the VEBAs.
19 We will do so as soon as practicable with the mediators, and
20 I can personally advise the Court that I'm confident that it
21 will be done in relatively short order. Thank you.

22 THE COURT: Thank you.

23 MR. CULLEN: Good morning, your Honor. Thomas
24 Cullen of Jones Day on behalf of the city. In light of these
25 developments, the city does propose to move forward with its

1 order of witnesses this week. We have -- that order,
2 serendipitously enough, really addresses issues at the front
3 end which are unconnected with the Syncora settlement,
4 principally the actuarial issues, art, and we have attempted
5 to move certain DWSD witnesses in front of any dealings with
6 the implications of the Syncora settlement. The first
7 witness to deal with those issues will be Mr. Malhotra, who
8 we believe comes up at the end -- on Friday, if at all, this
9 week. He's covering a great deal of ground, of course, and
10 there will be -- if not this week, there will be time over
11 the weekend to prepare any additional cross with respect to
12 the settlement for Mr. Malhotra. We believe that the -- that
13 that will allow the parties the ability to address the well-
14 trodden issues of art, DWSD, and actuaries this week and then
15 address the settlement-related issues either at the very end
16 of the week or early next.

17 THE COURT: Before you go, let's review your witness
18 order.

19 MR. CULLEN: Yes.

20 THE COURT: And can you describe in a sentence or
21 two what each will cover?

22 MR. CULLEN: Yes. This is what we have, your Honor.
23 Mr. Bowen is an actuary for Milliman. He worked on the
24 derivation and the implementation of the 6.75 revenue
25 assessment. He is a percipient witness, not an expert in

1 this case. He's going to testify about what actually
2 happened. Mr. Perry is an expert witness who will testify as
3 to the reasonableness of the 6.5. Ms. Fusco is the
4 representative of --

5 THE COURT: When you say 6.5 --

6 MR. CULLEN: 6.75.

7 THE COURT: 75, yeah.

8 MR. CULLEN: 6.75. I apologize, your Honor.

9 THE COURT: Let's not confuse the world on this.

10 MR. CULLEN: Yeah. I'm sorry. Thank you, your
11 Honor. Ms. Fusco is the representative of Christie's who
12 will testify as to their work. Ms. Nichol is an expert
13 witness who's going to be --

14 THE COURT: Well, stop there because we also have a
15 hearing today regarding Ms. Kopacz.

16 MR. CULLEN: Yes, your Honor. I was only addressing
17 the order of witnesses.

18 THE COURT: Okay.

19 MR. CULLEN: And this is all subject to the movement
20 of the Court, subject to the length of the cross-examination.
21 Ms. Nichol is going to be dealing with the issues of what is
22 the appropriate baseline to measure discrimination in the
23 plan. It's a witness of the Retirement Committee and
24 presented by them. Ms. Taranto is another actuarial witness.
25 We're hoping to get Mr. Bloom, who is the investment banker

1 on behalf of the Retirement Committees, who will testify as
2 to the arm's length nature of the negotiations and the result
3 of those negotiations with respect to pension issues.
4 Erickson and Plummer are both art -- are art valuation and
5 sale of the art issues. Mr. Satter has to do with the value
6 of the DWSD assets. Mr. Penske is a local notable developer
7 and a citizen of the city who will testify as to grand
8 bargain issues and investment in the city. Mr. Buckfire's
9 issues have been made available to the Court in his report.
10 He is not expected to testify with respect to the Syncora
11 settlement. Ms. McCormick will deal with -- McCormick will
12 deal with the DWSD issues and the operation of DWSD and
13 concerns which have been raised in this proceeding about the
14 capital expenditure budget and its sufficiency. Mr. Malhotra
15 is the E&Y witness with whom the Court is familiar, who will
16 testify as to the projections which will underlie the plan
17 and the baseline projections for the city. Mr. Orr then
18 comes up to testify with respect to the broad range of issues
19 relating to the plan and the settlements and feasibility and
20 other issues. Mr. Kaunelis is another DWSD witness with
21 respect to certain assumptions with respect to investment
22 principally. And Mr. Gilbert is, again, a citizen of Detroit
23 who will testify with respect to the grand bargain impact on
24 Detroit, et cetera. That is how we see it as of now, your
25 Honor.

1 THE COURT: And this is your projection for this
2 week and next?

3 MR. CULLEN: Yes, yes.

4 THE COURT: All right. Thank you. Let's leave that
5 up for a bit, if you don't mind. Okay. Thank you. I want
6 to add one other point here in relation to Syncora, which is
7 related only because it deals with Syncora. It has nothing
8 to do with the settlement, per se. The Court had entered an
9 order to show cause directed to Syncora and its attorneys why
10 they should not be sanctioned for the scandalous and
11 defamatory aspects of their second supplemental objection to
12 the plan. In the meantime, Kirkland & Ellis, on behalf of
13 itself and Syncora, has apologized to Judge Rosen and to Mr.
14 and Mrs. Driker for its conduct. The Court concludes that
15 those apologies, in the interest of justice, resolve any
16 issue of sanctions, and, accordingly, the Court here today
17 will be entering an order that vacates the order to show
18 cause and disposes of that issue. All right. Who wants to
19 be heard now?

20 MR. PEREZ: Good morning, your Honor. Alfredo Perez
21 on behalf of FGIC. Your Honor, we've listened to everything
22 that was said this morning, and I think I'm kind of standing
23 here in the same place I was a week ago or so last Tuesday.
24 We're going to need some time to prepare, and the issue is
25 when can we schedule that time. And so if the Court wants to

1 proceed with the actuaries and the art and then give us an
2 opportunity to prepare, I think that's perfectly appropriate,
3 but we're going to need a continuance for the two reasons
4 that we set forth in our papers. One, the additional time to
5 prepare, and, two, the additional time to prepare to the new
6 plan, which I'm glad we are going to get it today, and that
7 will give us -- but likely, your Honor, we're going to have
8 to have additional expert report. Likely, your Honor, we're
9 going to need to take one or two depositions, and we're going
10 to have to be able to be in a position to put on our case in
11 response to this new plan. So if the Court wants to proceed
12 with the actuaries and the, you know, several art witnesses
13 this week and then continue us until the 29th, I think we're
14 perfectly happy to do that, and I think that would allow
15 us -- although I really -- we really wanted to ask for two
16 weeks in our motion last night, but we decided that probably
17 wasn't doable and it wasn't as credible, but we are going to
18 need some time as set forth.

19 And we have this issue with the expert. There's no
20 reason why the city couldn't have agreed to let us use that
21 expert. They knew about it. They had the report. In the
22 interim, we're going to go and have to find our own expert.
23 So, your Honor, we're happy to proceed this week with those
24 sets of witnesses and then whenever Mr. Satter ends, take
25 that time off to prepare and come back on the -- and come

1 back on the 29th, and that's what we would propose.

2 MR. CULLEN: Thomas Cullen again, your Honor, for
3 the city. I would only say this, that distinctions must be
4 made here between the various interests we are working with
5 in dealing with the continuance of this proceeding. There is
6 the interest of the city itself in resolution of the
7 proceeding. There is the integrity of the proceeding. There
8 is the convenience of the witnesses to this proceeding, and,
9 finally, there is convenience of counsel. There's no doubt
10 about the interests of the city. The interests of the city
11 are to move forward as quickly as possible. The Court is
12 aware of the tremendous run rate of expense of this
13 proceeding. A week off from presenting evidence is not a
14 week off from the run rate of those expenses for the city.
15 The transition of the city to the post-emergency manager
16 world is proceeding apace as we speak. The sooner we get out
17 of this proceeding, the better it is for the city, the better
18 it is for that transition. The resolution of all of these
19 issues is critical to how the city moves forward.

20 With respect to the witnesses, it's no doubt that
21 they've rearranged their life to do this. You look at where
22 we are with Mr. Penske and Mr. Gilbert. As you might
23 imagine, they are very difficult people to schedule for
24 various good and sufficient reasons. I believe that the
25 sooner we get Mr. Malhotra on and all of his testimony in the

1 better that the opponents of the city will know how -- what
2 they need in terms of experts or not. The sooner we get
3 Mr. Orr in front of the Court, the better that they will know
4 going into those -- the gap between the 25th and the 26th in
5 the proceeding. So they've made significant adjustments in
6 their lives. Now, in these circumstances, the convenience of
7 the lawyers is only important to the extent that it threatens
8 or undermines the integrity of the proceeding, and I think
9 that that is a difficult case to make here. There are no
10 surprises certainly in the testimony of any of the witnesses
11 for this week. There are no surprises in the broader issues
12 that affect and surround the Syncora settlement in this. The
13 cone that Ms. Ball talked about has been there all along of
14 considerations and otherwise.

15 With respect to all of these witnesses, there has
16 been -- there have been depositions. There's been a very
17 thorough opening. The witnesses are no surprise, and it's
18 certainly no surprise that an ally in one of these
19 proceedings might follow its self-interest out of the case.
20 There's been something of an Agatha Christie mystery vibe
21 about this as parties disappear one by one all throughout
22 this case. And mediation is confidential, but the bodies of
23 Mr. Sprayregen and Mr. LeBlanc are not, and they've been
24 through this building continuously over the past few weeks.
25 So we have pulled this together. We pulled it together under

1 some time pressure, but in order for the city to move
2 forward, we think that people have and have -- have enough
3 preparation, have seen enough, can plead only attenuated
4 surprise with respect to the recent turns of events, and have
5 the materials in order to represent their client fairly as we
6 move forward. That's all I have, your Honor.

7 MR. PEREZ: May I respond, your Honor?

8 THE COURT: Yes, but let me just ask if anyone else
9 wants to be heard first.

10 MR. BRILLIANT: Your Honor, Allan Brilliant on
11 behalf of Macomb Interceptor Drain Drainage District, a Class
12 14 claimant, and I would have gotten up before Mr. Cullen,
13 but he beat me to the podium after Mr. Perez had spoken. We
14 join in Mr. Perez's argument with respect to requesting, you
15 know, a continuance. There's really two issues here, your
16 Honor. Mr. Cullen focuses really just solely on the Syncora
17 withdrawal aspect of the issue, which obviously makes things
18 a little bit more difficult for the various parties since
19 there had been an agreement and allocation of who was going
20 to deal with what witnesses, which all needs to be changed
21 now, but the more fundamental issue we have here, your Honor,
22 is there's a new very complicated deal that Syncora has
23 entered into, which needs to be analyzed by all the parties
24 to determine what additional objections they may have. And
25 as Mr. Perez said, it's likely, you know, to lead to

1 additional discovery, and obviously we're going to need to
2 put on additional testimony with respect to the issues. It's
3 not as if Syncora was just being given a certain amount of --

4 THE COURT: Assuming you object to it.

5 MR. BRILLIANT: Assuming we object to it, but we
6 need to have some opportunity to determine --

7 THE COURT: I just found it interesting your
8 presumption that you would object.

9 MR. BRILLIANT: Well, your Honor, at a minimum,
10 they're saying that Syncora is getting 13.9 --

11 THE COURT: On behalf of your \$25 million claim.

12 MR. BRILLIANT: Twenty-six, your Honor, but the --

13 THE COURT: Forgive me.

14 MR. BRILLIANT: But at a minimum, your Honor, it
15 would appear they're getting, you know, a 40-percent, you
16 know, larger distribution, you know, at face value if one
17 believes that all of these other issues that are here are
18 not, you know, on account of their COPs claims. But, your
19 Honor, the problem that we have, you know, in going forward
20 and doing the investigation as to the, you know -- you know,
21 the fairness and whether or not it unfairly -- the new
22 settlement unfairly discriminates against, you know, Class 14
23 is that we have to -- if you agree with the city, is we have
24 to file the objection, do that analysis, discovery, retain
25 witnesses, while we're reorganizing our workload, you know,

1 among all the objectors in light of Syncora's withdrawal from
2 the plan, and that just -- your Honor, is just, you know, too
3 much, you know, to expect from all the objectors at this
4 point in time. And really, your Honor, it's just in the
5 interest of justice at some point, you know -- doesn't
6 necessarily have to be today, although we would prefer that
7 it be sooner rather than later, but at some point the parties
8 have to be given an opportunity to do that analysis. And
9 given all the -- if all the resources are being used here in
10 preparing for the cross-examination of the witnesses, it's
11 just not going to be able to -- you know, to be accomplished
12 in a fair way.

13 THE COURT: Thank you. Would anyone else like to be
14 heard?

15 MR. HOWELL: Yes, your Honor. Steven G. Howell,
16 Dickinson Wright, special assistant attorney general,
17 appearing on behalf of the state. Your Honor, the State of
18 Michigan also opposes an adjournment in this matter and
19 supports the city's objection to it and believes that for all
20 the parties that are involved with the exception of a couple,
21 this has been a long process, and we would like to see this
22 continue. We believe that this is not that big a surprise
23 that this came along, and we would like to see the Court
24 continue to move forward with this on the schedule we have
25 set. Thank you, your Honor.

1 THE COURT: Thank you. Would anyone else like to be
2 heard? Mr. Perez.

3 MR. PEREZ: Your Honor, three points. What you
4 didn't hear from Mr. Cullen was due process, and that's,
5 frankly, the only issue that we have before the Court. Are
6 we receiving due process? Furthermore, your Honor, to some
7 extent this is a situation where if we're not granted a
8 continuance, no good deed goes unpunished because the
9 objectors collectively determined we had to allocate our
10 time. We had to allocate our resources. We didn't want to
11 be duplicative. And now as a result -- and we're not asking
12 for a long continuance, your Honor, and the fact that the
13 schedule is how it is really shortens the time that we would
14 be asking for a continuance. But, your Honor, to say that we
15 do not need additional time to prepare based on the record,
16 the fact that we were all sharing time, the fact that the
17 Court encouraged us to have a lead questioner for the
18 witnesses, just is -- just doesn't comport with due process.

19 Furthermore, your Honor, I would -- I only hearken
20 back to the time when the Court asked somebody whether, you
21 know, being here and supporting Detroit wasn't the most
22 important thing they were doing. I'm sure that the witnesses
23 are important people who need to be -- you know, need to be
24 doing important things, but this is actually more important.
25 Your Honor, I commit to you that we will work as diligently

1 as possible, but, for instance, this whole situation with the
2 one expert witness, it's a total self-inflicted wound by the
3 city. There's no reason for them to have done that other
4 than to be vindictive.

5 THE COURT: What witness are you talking about, sir?

6 MR. PEREZ: Murphy, your Honor. Thank you.

7 THE COURT: Anything further on this issue? All
8 right. The Court will take it under advisement.

9 MR. CULLEN: One moment.

10 THE COURT: Sir.

11 MR. CULLEN: Thank you.

12 THE COURT: Yes.

13 MR. CULLEN: I do think that we were addressing the
14 due process issue when I talked about the integrity of the
15 process versus the convenience of counsel. These are all
16 well-represented parties. They've had notice of these issues
17 for some time. And I'm sure that this is hard, and if this
18 were a mere game, we would grant this courtesy as a courtesy,
19 but it is not. It is a proceeding about the fate of Detroit.
20 Time is very important to us. The expense of it is very
21 important to us. The transition is very important to us.
22 And we think that there is sufficient opportunity for very
23 talented counsel to make a record on the issues about which
24 they care about. That's all, your Honor.

25 THE COURT: All right.

1 MR. PEREZ: May I respond, your Honor?

2 THE COURT: If you have anything new to add,
3 absolutely.

4 MR. PEREZ: Your Honor, the only question I have is
5 I wonder what they would be saying if the shoe was on the
6 other foot. Thank you.

7 THE COURT: Okay. I'm going to take this under
8 advisement and take a recess now, and we'll reconvene at
9 9:30, please.

10 THE CLERK: All rise. Court is in recess.

11 (Recess at 9:20 a.m., until 9:39 a.m.)

12 THE CLERK: All rise. Court is in session. You may
13 be seated.

14 THE COURT: It appears everyone is present.

15 MR. STEWART: Your Honor, Geoffrey Stewart, Jones
16 Day, for the city. The city calls its next witness, Glenn
17 Bowen.

18 THE COURT: Well, hang on. I've got to give a
19 ruling on --

20 MR. STEWART: Oh, I'm sorry.

21 THE COURT: -- the matter I took under advisement.

22 MR. STEWART: I better sit down.

23 THE COURT: Good idea. As the Court discerns the
24 motion for adjournment here, there are three relatively
25 distinct grounds for it, and the issue before the Court is

1 whether these grounds constitute extraordinary cause for the
2 delay or continuance that is sought here. The three are that
3 Syncora's withdrawal from the defense of the city's case
4 causes FGIC and the other objecting parties, which at this
5 point are mainly the Macomb Drainage District, to take over
6 those parts of the defense that FGIC had taken responsibility
7 for in their division of labor. The second is the strong
8 potential for FGIC to need to retain experts that Syncora had
9 retained or maybe it's only one -- excuse me -- so that it
10 can properly pursue its defense of the city's case in the
11 absence of Syncora and its experts. And the third is the
12 potential need to file supplemental objections to the -- what
13 will be, I guess, the seventh amended plan to be filed here
14 promptly along with any potential need for additional
15 discovery relating to those supplemental objections to the
16 amendments in the plan.

17 The Court must conclude that the first two of those
18 asserted grounds do not constitute extraordinary cause for
19 any adjournment, and to the extent the motion is based on
20 those two grounds, it is denied. There is merit in the
21 city's position that Syncora's negotiations with the city
22 over the past several weeks have been well-known, and in
23 those circumstances it seems to the Court that it was
24 incumbent upon all objecting parties, consistent with their
25 obligations to their clients, to prepare for the contingency

1 that, in fact, Syncora might settle at some point, and that
2 preparation would have included necessarily preparation to
3 take over for the examination of the witnesses that Syncora
4 was going to cover and, in the absence of an agreement
5 regarding experts, locating experts. In this regard, the
6 Court will also note parenthetically but importantly that
7 nothing in FGIC's motion or its presentation today identified
8 any steps that FGIC took in regard to cross-examination
9 preparation or locating and preparing an expert since the
10 agreement in principle was announced last Tuesday night or
11 addressed how those five days was insufficient to meet its
12 preparation needs.

13 On the other hand, the Court must conclude that the
14 city's filing of an amended plan incorporating its settlement
15 with Syncora does require the Court to accommodate the
16 interests of FGIC and the Macomb Drainage District and other
17 objecting parties to have an opportunity to examine that plan
18 or the amendments to it and to file supplemental objections
19 to that plan as they deem appropriate, to take discovery as
20 necessary in relation to that, and to prepare to address the
21 Syncora settlement as part of this confirmation hearing.

22 Having said that, however, it's less clear to the
23 Court how the details of that should play out, and so,
24 accordingly, I'm going to ask counsel for FGIC and Macomb and
25 any other objecting creditors to meet and confer with counsel

1 for the city to see if you can come to some agreed upon
2 schedule or plan that will -- excuse me -- accommodate the
3 interests of the city in the promptest possible resolution
4 here and in the objecting parties' interests in an adequate
5 opportunity to address the new plan, and perhaps you can do
6 that over the lunch hour and then let the Court know where
7 you stand at that time. I think that's as much as we can do
8 on this now, and I will ask the city to proceed with its
9 case.

10 MR. SOTO: Your Honor, one -- if I can just sit --
11 THE COURT: Yeah.

12 MR. SOTO: FGIC will be asking the Court for an
13 accommodation with respect to the adding or replacing of the
14 one expert witness. We've located another witness, had
15 initial conversations with him. I've had some initial
16 conversations with Mr. Cullen, and he will be replacing Dr.
17 Murphy. It's a fellow named Dr. Jonathan Guryan is who we
18 are working with, so --

19 THE COURT: What's the name, sir?

20 MR. SOTO: Dr. Jonathan Guryan, who's at
21 Northwestern.

22 THE COURT: Okay.

23 MR. SOTO: I guess the other guy was in Chicago. So
24 we'll be coming to the Court for that accommodation with
25 respect to this.

1 THE COURT: Well, I urge you to discuss that
2 accommodation, whatever it is you will be seeking, with the
3 city and see what you can work out.

4 MR. SOTO: Thank you, your Honor.

5 THE COURT: If I have to decide something, I will,
6 but I think it is appropriate to ask you all to try to figure
7 out how to deal with this in the meantime. Mr. Stewart.

8 MR. STEWART: And I apologize for jumping the gun
9 earlier.

10 THE COURT: Okay.

11 MR. STEWART: Geoffrey Stewart, Jones Day, for the
12 city. The city calls its next witness, Glenn Bowen. Your
13 Honor, if I may have leave to approach, I have five sets of
14 the exhibits we would use with Mr. Bowen.

15 THE COURT: Yes, sir. Step forward, please, sir,
16 and raise your right hand.

17 GLENN BOWEN, CITY'S WITNESS, SWORN

18 THE COURT: All right. You may sit down in the
19 witness box. Thank you.

20 MR. STEWART: May I proceed, your Honor?

21 THE COURT: One second. Seems like we're still
22 getting organized here. Okay. You may proceed.

23 MR. STEWART: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MR. STEWART:

1 Q Good morning, Mr. Bowen.

2 A Good morning.

3 Q Could you please give us your full name and address?

4 A Glenn David Bowen, Wayne, Pennsylvania.

5 Q Okay. Are you employed?

6 A Yes.

7 Q And by whom are you employed?

8 A Milliman, Incorporated.

9 Q And what is Milliman, Incorporated?

10 A An actuarial consulting firm.

11 Q Okay. And where are the offices of Milliman in which you

12 work?

13 A I work in the Wayne, Pennsylvania, office.

14 Q And Wayne is a suburb of Philadelphia?

15 A Correct.

16 Q Okay. Tell us, if you could, of your college education?

17 A I have a bachelor's degree and a master's degree in civil

18 engineering from the University of Delaware.

19 Q And what year did you receive those -- what years did you

20 receive those degrees?

21 A The bachelor's degree in 1989, master's degree in 1994.

22 Q Did there come a time when you became an actuary?

23 A Yes.

24 Q When was that?

25 A I was hired in 1996 by Towers Perrin Company, now called

1 Towers Watson.

2 Q Okay. And you were hired by them as an actuary?

3 A An actuarial analyst, yes.

4 Q And how long did you remain at Towers Perrin?

5 A Roughly five years.

6 Q And what was your job after that?

7 A I was hired by Milliman in 2001.

8 Q Okay. And tell us, if you could, what -- in brief what
9 your career at Milliman has been.

10 A I am a pension actuary, so I consult to pension plan
11 sponsors and legislative bodies that have interests in the
12 pensions that are sponsored in their jurisdictions.

13 Q Okay. You just used a term "pension plan sponsors."
14 What is a pension plan sponsor?

15 A There can really be I'll say two broad kinds. In the
16 corporate sector, you would typically think of it as the
17 employer who sponsors the pension plan, and in the
18 governmental sector, it would be the local government or
19 other governmental authority.

20 Q Okay. And in your practice as an actuary, what
21 percentage of your time have you spent working with
22 government sponsored pension plans?

23 A I would say it's certainly morphed over my career from a
24 focus on corporate to a focus on public, and public is now 90
25 percent or more of what I do.

1 Q And how many different public pension plans have you
2 worked with over the course of your career?

3 A I'll say dozens, and I've also worked with retiree
4 healthcare plans in the public sector as well, about a
5 hundred of them.

6 Q Are you qualified as an actuary?

7 A I'm a fellow of the Society of Actuaries, also an
8 enrolled actuary under ERISA and a member of the American
9 Academy of Actuaries.

10 Q Are those the credentialing bodies for actuaries in the
11 U.S.?

12 A Yes.

13 Q Have you published any papers or other articles in the
14 field of being an actuary?

15 A About a half dozen.

16 Q Okay. Now, let's -- I'd like to just make sure we have
17 our definitions nailed down before we go further. The city,
18 of course, has two Retirement Systems, does it not?

19 A Yes.

20 Q Are they sometimes also called pension plans?

21 A Yes.

22 Q What are the city's two Retirement Systems?

23 A There's the General Retirement System and the Police and
24 Fire Retirement System.

25 Q And are they sometimes known by their initials, the GRS

1 and the PFRS respectively?

2 A Yes.

3 Q And just a minor point, is it the case that Milliman
4 refers to them as the DGRS and the DPFRS?

5 A That is correct.

6 Q But the terms are interchangeable. We don't need the D?

7 A We do not.

8 Q We all know we're talking about Detroit here?

9 A Yes.

10 Q Okay.

11 A I speak for myself only saying that.

12 Q And you're aware of something called a -- called the
13 DWSD?

14 A Yes, I am.

15 Q What is the DWSD?

16 A The Detroit Water and Sewer Department.

17 Q Do the employees of the DWSD -- are they members of
18 any -- either of the city's Retirement Systems?

19 A Yes, they are.

20 Q Which system?

21 A The General Retirement System.

22 Q And, by the way, am I correct that one refers to the
23 employees as members?

24 A In a public pension plan, yes.

25 Q Now, you're aware of something called a defined benefit

1 plan?

2 A Yes.

3 Q What is a defined benefit plan?

4 A A defined benefit plan is a retirement plan where, as
5 it's titled, the benefit is defined. There will be a formula
6 that will determine the amount of the pension that you
7 receive.

8 Q And who makes contributions to a defined benefit plan?

9 A The plan sponsor will make contributions. In some
10 instances, the employees will be required to make a
11 contribution as well.

12 Q Okay. So did there come a time when you began working on
13 matters relating to the City of Detroit's two pension plans?

14 A Yes.

15 Q When was that?

16 A It was in the middle of 2012.

17 Q And what were you asked to do in the middle of 2012?

18 A Our very first assignment was a request that we review
19 the annual actuarial valuation reports that had been prepared
20 by the Systems' retained actuary and provide us, as much as
21 possible, a description of the status of the plans in
22 laymen's terms.

23 Q Okay. And let me direct your attention to the exhibits
24 before you. They may be at the bottom of your pile, but
25 they're two.

1 MR. STEWART: And let's put them up in order, if we
2 could, Syncora Exhibit 4054 and Syncora Exhibit 4776. And,
3 your Honor, I believe these have been stipulated into
4 evidence.

5 MR. WAGNER: We have no objection, your Honor.

6 BY MR. STEWART:

7 Q Mr. Bowen, do you have these two exhibits before you?

8 A I do.

9 Q Tell me, if you --

10 THE COURT: Let me just say for the record that in
11 case they are not already in evidence, Exhibits 4054 and 4776
12 are admitted.

13 (Syncora Exhibits 4054 and 4776 received at 9:56 a.m.)

14 BY MR. STEWART:

15 Q Mr. Bowen, could you tell us what these two exhibits are?
16 A These exhibits are the annual actuarial valuation reports
17 prepared by the Systems' retained actuary. One report is for
18 the General Retirement System and one is for the Police and
19 Fire Retirement System.

20 Q Now, you just used the phrase "Systems actuary." What is
21 the Systems actuary?

22 A Excuse me. I use that phrase to define the actuary who
23 has the responsibility for conducting the annual valuation.

24 Q And that's the actuary hired by the Retirement System
25 itself?

1 A Yes.

2 Q Who is the actuary for these two Retirement Systems?

3 A Gabriel, Roeder, Smith & Company.

4 Q And their name appears in the upper right-hand corner of
5 each of these two exhibits?

6 A Yes.

7 Q Okay. And so I believe you were telling us that your
8 first assignment had to do with looking at these two, and, by
9 the way, these are, once again, called annual valuation
10 reports?

11 A Yes.

12 Q Do you sometimes call them AVR's?

13 A I do not, but I can if you would like.

14 Q I won't either then. I'll call them annual valuation
15 reports. So what was it you were asked to do in particular
16 with respect to these annual valuation reports?

17 A As I mentioned, we were asked to review them, and we were
18 asked to explain them to city personnel who did not have
19 extensive pension background.

20 Q Now, I think you testified this engagement came to you in
21 the middle of 2012?

22 A Yes.

23 Q These are the reports, however, for the year ended 2011,
24 are they not?

25 A That's correct.

1 Q Why was it you were dealing with 2011 reports when you
2 were doing your work in 2012?

3 A These were the most recently published reports that
4 existed at that time.

5 Q Okay. And so as a result of looking at these reports,
6 what did you do next?

7 A We documented our results in a letter and met with the
8 city personnel.

9 Q Now, you just used the term "letter." Does the term
10 "letter" in the way -- in your work for the city have any
11 particular meaning?

12 A Our relationship with the city over time has been ad hoc
13 consulting, you know, ad hoc requests, and in those cases we
14 will typically write a letter because a template does not
15 exist to respond to such a request.

16 Q Fair to say that the deliverable that Milliman has in its
17 work for the city has been letters?

18 A Yes.

19 Q How many letters over the course of Milliman's engagement
20 by the city has Milliman delivered to the city?

21 A Speaking for the pension side, it has been over a
22 hundred.

23 Q Okay. Now, was one of the things you were asked to do
24 here in 2012 to look at the city's contribution?

25 A Later in 2012, yes.

1 Q Okay. Let's move on then, but before I do that, let me
2 just ask you about something else.

3 MR. STEWART: Can we please put up on the screen
4 Exhibit 633, which is a demonstrative exhibit?

5 BY MR. STEWART:

6 Q Mr. Bowen, is Exhibit 633 in front of you?

7 A Yes.

8 Q Have you seen this before?

9 A I have.

10 Q What is Exhibit 633?

11 A It is -- it contains an equation and a pictorial diagram,
12 which is a very high-level description of how a pension plan
13 needs to stay in balance over time.

14 MR. STEWART: Your Honor, I would move into evidence
15 only for purposes of being a demonstrative Exhibit 633.

16 THE COURT: Any objections?

17 MR. WAGNER: No objection, your Honor. And just for
18 the record, Jonathan Wagner from Kramer Levin Naftalis &
19 Frankel on behalf of the COPs.

20 THE COURT: Thank you, sir.

21 MR. STEWART: And I think --

22 THE COURT: 633 is admitted.

23 (City Exhibit 633 received at 10:00 a.m.)

24 MR. STEWART: Sorry, your Honor.

25 MR. WAGNER: For demonstrative purposes.

1 BY MR. STEWART:

2 Q And Exhibit 633 sets forth an equation?

3 A Yes.

4 Q What is the purpose -- what is the explanatory purpose of
5 this equation?

6 A Over the long term, the inflows and the outflows of the
7 pension plan must be in balance in order for the plan to pay
8 the promised benefits.

9 Q Okay. Let's go through each of the letters here. What
10 does the letter "C" stand for?

11 A "C" stands for contributions.

12 Q And would that be the city contribution we talked about
13 earlier?

14 A Yes.

15 Q What does "I" stand for?

16 A "I" is investments.

17 Q And when you say "investments," what's being invested?

18 A There is a current pool of assets and an expectation of
19 future income over time.

20 Q Okay. Is the round blue figure -- is that -- does that
21 represent the current assets?

22 A That represents a tank, if you will, and if you think of
23 the assets as water, the tank is the trust. It holds the
24 assets.

25 Q Okay. And then what is "B"?

1 A "B" is benefits.

2 Q And when you say "benefits," what are you referring to?

3 A In this case, this is a -- we don't actually use this
4 equation, per se. It's not that simple. But that's a
5 measure of the liability for the benefits that have been
6 promised.

7 Q These are the benefits to be paid to retirees?

8 A Yes.

9 Q Okay. And how do you know what those benefits are?

10 A That's the -- one of the main purposes of conducting the
11 annual valuation.

12 Q Okay. And then "E" is our final letter. What is "E"?

13 A That is expenses.

14 Q Okay. And so tell us now that we've walked through this
15 how this model works.

16 A Okay. It's I'll say easy to conceptualize on a single
17 person. If there was one person in a pension plan, you would
18 effectively spend their career putting money in on the left
19 and earning a return on it, and then the pool would be
20 effectively full at the time of retirement, and during the
21 time of retirement the benefits would flow out.

22 Q And at various times in your work for the city, were you
23 asked to determine individual values for either "C" or "B" or
24 "I" or even "E"?

25 A We've worked with all of them over time.

1 Q Okay. And now let me ask you about the next assignment.
2 Later in 2012, were you asked to do something new by the
3 city?

4 A I believe the next assignment in late 2012 was to do a
5 simple forecast of employer contributions.

6 Q Of "C"?

7 A Correct.

8 Q And, once again, did you work with an actuarial valuation
9 report?

10 A Yes.

11 Q Do you know whether it was the ones we've already seen,
12 or was it a new report?

13 A I believe at the time our initial assignment, the 2011
14 was still the most recently published report.

15 Q So what did you do vis-a-vis the 2011 report?

16 A We looked at the report, and there are various I'll say
17 facts and figures in there of an actuarial nature. Using
18 those facts and figures and some extrapolation techniques, we
19 projected forward five years and used the methodology that
20 was in use to produce contributions in order to demonstrate
21 what the expected pattern of contributions was going to be.

22 Q Now, let me direct your attention now to 2013. Have you
23 heard of something called a pension task force?

24 A Yes.

25 Q What is or was the pension task force?

1 A The pension task force was a group of advisors that had
2 been retained by the city that was responsible for pension
3 matters.

4 Q Okay. And what sort of things, in a very general matter,
5 did the pension task force look at?

6 A The pension task force looked at a lot of things. On
7 this diagram, most of the focus was on -- most of the focus
8 of the tasks that came to Milliman was on benefits.

9 Q Okay. And I apologize if I've asked you already. Who
10 are the -- who are the members of the task force?

11 A The two members that interfaced with the most were Evan
12 Miller from Jones Day and Chuck Moore from Conway MacKenzie.

13 Q Was this before or was it after the city filed its
14 bankruptcy petition?

15 A The pension task force was formed in early 2013, so it
16 would have been before.

17 Q Okay. Now, let me ask you some definitions before we
18 move forward. Have you heard of something called an accrued
19 actuarial liability?

20 A Yes.

21 Q And that is sometimes called AAL, is it not?

22 A Yes, it is.

23 Q Okay. What is it?

24 A It is the measure that the actuary will determine in the
25 annual valuation report that represents the liability that is

1 categorized under "B" in this long-term equation.

2 Q Okay. So is it a present value or is it calculated in
3 some different way?

4 A It is a present value.

5 Q So the AAL is the present value of "B"?

6 A Correct.

7 Q Okay. Have you heard of something called an unfunded
8 accrued actuarial liability?

9 A Yes.

10 Q What is that?

11 A That is the difference between the present value of the
12 liability we were just discussing and the assets that are
13 currently on hand.

14 Q So if we look at our diagram here, that would have some
15 bearing on the level of the water in this blue tank we have?

16 A If there was a UAAL, unfunded actuarial liability, that
17 would be like saying the tank is not quite as full as we'd
18 like it to be today.

19 Q Okay. So just to summarize, the AAL is the "B" in our
20 diagram; correct?

21 A Correct.

22 Q And the UAAL would be if the tank wasn't as high up as it
23 ought to be?

24 A Correct.

25 Q Okay. Let me ask you about a couple of other terms.

1 Have you heard of something called an investment return
2 assumption?

3 A Yes.

4 Q What is that?

5 A That is the rate of return that, on average, you are
6 expected to earn on your invested assets in the future.

7 Q And how does it figure into the calculation we see in
8 Exhibit 633?

9 A In the first step and where the actuary spends most of
10 their time is in the determination of the "B," benefits, the
11 accrued liability. We calculate those on a nominal basis in
12 all future years, and to develop a present value, we will
13 discount them based on the expected investment return.

14 Q Okay. What is the relationship between the investment
15 return assumption and the level of the city's contributions?

16 A The higher the investment return assumption, you're
17 assuming that more of the ultimate benefits will be paid by
18 investment return, and in the short term, that depresses the
19 contribution level.

20 Q Okay. And the lower the investment return assumption,
21 what effect does that have?

22 A That's the opposite. That assumes that since you're
23 going to earn less on your investments, more contributions
24 would be needed over time, and it raises the short-term
25 contributions.

1 Q Okay. Have you heard of the term used "funding status"?

2 A Yes.

3 Q What is funding status as that term is used with respect

4 to public pension plans?

5 A Funding status is the assets divided by the liabilities.

6 Q Okay. And what does it -- what does it tell us?

7 A Higher funded status is better.

8 Q You have more funds?

9 A Yes.

10 Q Okay. Did there come a time in 2014 you were asked to do

11 something called a replication or a replication audit?

12 A Yes.

13 Q What is a replication?

14 A A replication is when an outside actuary, not the system

15 actuary, is asked to effectively take all of the inputs used

16 by the system actuary, program their own valuation system or

17 their own software, and attempt to reproduce similar results.

18 Q And when were you asked to do a replication audit?

19 A We were actually asked at some point in 2013.

20 Q Okay. And which systems were you asked to -- were you

21 asked to do one for both of the systems?

22 A Yes.

23 Q Okay. Now, I think you said that a purpose of this was

24 to check the work or duplicate the work of the system

25 actuary?

1 A That was part of it, yes.

2 Q Okay. And what role in that assignment did Gabriel,
3 Roeder's annual valuation reports play?

4 A That was really the fundamental document we looked to to
5 learn about the plan.

6 Q Okay. So look, if you could, at the following documents
7 which are before you.

8 MR. STEWART: And these, I believe, have been, once
9 again, stipulated into evidence, but let's put them up. It's
10 1001, 1004, 1023, and 1024. And, your Honor, as I said, I
11 think these came in under the operation of the pretrial
12 order, but for avoidance of data, I will move them into
13 evidence if there's no objection.

14 MR. WAGNER: That's fine. They were actually on our
15 exhibit list, so we -- no problem.

16 THE COURT: All right. All right. If they were not
17 previously admitted, they are now.

18 (COPs Exhibits 1001, 1004, 1023, and 1024 received at
19 10:09 a.m.)

20 BY MR. STEWART:

21 Q Okay. Now, in your replication audit, to spend a minute
22 on these, tell us, if you could, what these four exhibits
23 are.

24 A Well, I only see one on my screen, but I assume you have
25 two valuation reports or four valuation reports.

1 Q Yeah. You actually have them in your packet there.
2 There's a mound of paper. But let me ask you this. In your
3 replication that you did in 2014, which of these valuation
4 reports did you work with?
5 A Well, our task was to replicate the 2013 valuations.
6 Q And so would that be Exhibit 1023 and 1024?
7 A Yes. They are the 2013 valuations.
8 Q And which one is for the GRS?
9 A 1023 is GRS.
10 Q Okay. And the PFRS is 1024?
11 A Correct.
12 Q Okay.
13 A Yes.
14 Q Let's go through these reports so we have an
15 understanding of how they work, and let's do it with 1024, if
16 we could. Do you have that before you?
17 A You said 1024?
18 Q I did.
19 A Okay.
20 Q Yeah. And the cover, of course, is the cover, and the
21 second page is the table of contents; correct?
22 A Yes.
23 Q And the third and fourth page are the cover letter from
24 Gabriel, Roeder to the trustees of the system?
25 A Correct.

1 Q Okay. Let's now go, if we could, to page 4. And I
2 think -- is that 4? Yeah, there we go. Page 4. What is
3 page 4 of Exhibit 1024?

4 A Page 4 is a summary. You could best describe it as "B"
5 in our earlier equation, benefits, the present value of the
6 benefits payable by the system.

7 Q Okay. At the top it says "actuarial accrued liabilities
8 as of June 30th, 2013"?

9 A Correct.

10 Q And that's the term we talked about earlier?

11 A Yes.

12 Q And then we have a series of calculations here on the
13 table?

14 A Yes, yes.

15 Q Okay. Now, at the bottom -- at the very bottom of it, is
16 there a place where this report sets forth the actuarial
17 accrued liabilities for the System?

18 A Yes.

19 Q And where is that?

20 A That is the first line in the third box under "System
21 Totals."

22 Q Okay. And that number is \$3.89 billion?

23 A Correct.

24 Q Below that there's something called accrued assets.

25 A Yes.

1 Q What does "accrued assets" mean?

2 A In this case, I believe it is the smoothed value of
3 assets that is used in the contribution calculation.

4 Q Okay. And then at the bottom we have -- is that the
5 UAAL?

6 A Yes.

7 Q Okay. Let's keep going through the report. If we could,
8 let's turn to page 15. I think it's -- there we go. Do you
9 have page 15 before you?

10 A Yes.

11 Q What is page 15 and the pages following it?

12 A It's labeled "Summary of Benefit Provisions," and this is
13 where the actuary sets forth eligibility conditions and
14 resulting benefits that define what the members will receive.

15 Q Okay. And do you know where this information comes from?

16 A My understanding is that some of it may be set in
17 statute, and some of it is in collective bargaining
18 agreements.

19 Q Now, in your replication audit, your replication
20 procedure, what use did you make of this part of the exhibit
21 that summarized benefit provisions?

22 A One of the requirements of performing a valuation is that
23 we in our system code the benefits that members are eligible
24 for, so we started with this document.

25 Q Okay. Let's go, if we could, to page 21. What is page

1 21 and the pages after it? What do they set forth?

2 A These are summaries of what I call census data. It is
3 data regarding the members of the system.

4 Q Okay. And what does it say? What does it tell us about
5 the members of the system?

6 A These are summary tables that summarize the data which is
7 on each individual member's record of quantities that are
8 important for the pension valuation.

9 Q And what relevance does this have to your work in a
10 replication procedure?

11 A We need to know the membership of the system to be able
12 to value to perform the replication.

13 Q Let's go, if we could, now to page 31. 31 and the pages
14 after it, what do they set forth?

15 A These are assumptions, which is I'll say the third
16 component of running a valuation or doing a replication.

17 Q And what's the relevance of assumptions in this exercise?

18 A What we are trying to model in the determination of "B"
19 is the expected future cash flows that the system will
20 disgorge over time, and they are all contingent upon what the
21 members do, how long they work, how long they live, et
22 cetera.

23 Q Now, I've been asking you about Exhibit 1024, which is
24 the actuarial valuation report for the PFRS. Is the
25 structure of the report for the GRS similar?

1 A Yes.

2 Q Okay. So before I go further, let me ask you this. Does
3 Milliman have a calculation engine known as VAL 2000?

4 A Yes.

5 Q Who or what is VAL 2000?

6 A VAL 2000 is a software system developed and maintained by
7 Milliman for use in preparing valuations of pensions and
8 retiree healthcare systems.

9 Q Have you used VAL 2000 in your career at Milliman?

10 A Yes.

11 Q How often have you used it?

12 A Continuously.

13 Q How long since you joined Milliman have you worked with
14 VAL 2000?

15 A It was there when I joined, so continuously since 2001.

16 Q How well do you know the operation and features of this
17 software?

18 A Very well.

19 Q Okay. Now, what role did VAL -- did this software play
20 in the replication procedure you've described to us?

21 A I think you used the phrase "calculation engine."

22 Q I did.

23 A So VAL 2000 you can think of as a template that is
24 designed to accept inputs and then do the resulting
25 calculations.

1 Q Okay. And what inputs -- in this replication procedure
2 were inputs loaded into the software?

3 A That would be the three we just mentioned. The census
4 data is loaded into the software, the actuarial assumption
5 tables are loaded into the software, and we code the benefit
6 provisions.

7 Q Okay. From the report that we looked at?

8 A Correct.

9 Q Okay. And who did the loading of this information?

10 A Various members on staff.

11 Q And what was your role in terms of that part of the work?

12 A I guess the best way to characterize it is the analysts
13 on staff work under the direction of the consultants, so in
14 terms of some of the mechanical loading procedures, we set
15 forth what I call a job description.

16 Q Okay. And what role did you have in assuring that the
17 job description was adhered to?

18 A We have a series of peer review or checking that gets
19 done after those procedures are completed.

20 Q Okay. And once the data was loaded, it was then recited
21 in the software; correct?

22 A I'm not sure I understand the meaning of "recited."

23 Q The data was loaded into VAL 2000 --

24 A Yes.

25 Q -- is that right?

1 A Yes.

2 Q Was it at that point then saved and archived in the
3 system?

4 A Yes.

5 Q Is it still there?

6 A Yes.

7 Q Okay. Now, let's, if we could -- and did there come a
8 time when you, in fact, performed the replication procedure?

9 A Yes.

10 Q Okay. And what -- and did you report to the city what
11 you found?

12 A Yes.

13 Q What form was your report?

14 A That was a letter for each of the systems.

15 Q Okay. Let's, if we could, look at Exhibits 1008 and 491.
16 Mr. Bowen, do you have Exhibits 1008 and 491 before you?

17 A I'm working on it.

18 Q Okay.

19 MR. STEWART: Can you put up 491? Ah, there we go.

20 MR. WAGNER: I'm sorry. Can I get a copy of 491? I
21 don't see it in the book.

22 MR. STEWART: Is it not in the book?

23 THE WITNESS: Yes, I have them.

24 BY MR. STEWART:

25 Q Okay. All right. Before we go further, tell us what

1 these two exhibits are.

2 A 491 is our report on the replication of DGRS, and 1008 is
3 our report on the replication of DPFRS.

4 Q Who wrote these two letters?

5 A Myself and a colleague of mine.

6 Q And is your -- does your signature appear at the back of
7 each letter?

8 A Yes.

9 Q Okay. And before these letters went out, what did you do
10 to assure the accuracy of the contents of the letters?

11 A I was involved in the process all the way through,
12 drafting the letter, reviewing the results that are in the
13 letter.

14 MR. STEWART: Your Honor, I move admission of both
15 exhibits.

16 MR. WAGNER: No objection.

17 THE COURT: They are admitted.

18 (City Exhibit 491 and COPs Exhibit 1008 received at 10:19
19 a.m.)

20 BY MR. STEWART:

21 Q Okay. Let us, once again, deal with just the PFRS side
22 of this. That's Exhibit 1008. Do you have that before you?

23 A I do.

24 Q Okay. Let's go through it, if we could. We have a -- we
25 have the first page, and then on the second is something

1 called project description.

2 A Yes.

3 Q And just as a general matter, what is the project
4 description?

5 A The project description is to determine the June 30,
6 2013, actuarial liability for the PFRS.

7 Q Okay. And it refers, does it not, to the actuarial
8 valuation report we've been talking about?

9 A The 2012 report of DPFRS, yes.

10 Q And has the link to where it could be found on the
11 Internet?

12 A Correct.

13 Q Okay. Now, further down there's a paragraph entitled
14 "Investment Return."

15 A Yes.

16 Q Do you see that?

17 A I do.

18 Q Now, does this indicate that you ran this replication
19 using two different investment return assumptions?

20 A Yes.

21 Q One was eight percent, and one was 6.75 percent?

22 A Correct.

23 Q Where did the eight-percent assumption come from?

24 A That is the rate that is used in the valuation report.

25 Q And where did the 6.75-percent assumption come from?

1 A That was a request from the city.

2 Q Okay. As a result of this replication procedure, were
3 you able to determine the AAL for the system under these two
4 different investment return assumptions?

5 A Yes.

6 Q And let's look, if we could, at page 6 of the exhibit.
7 Do you see the table on page 6?

8 A Yes.

9 Q And what does the table on page 6 set forth for us?

10 A That is the results of our replication based on an eight-
11 percent investment return rate and a 6.75-percent investment
12 return rate.

13 Q Okay. Just for the record, what was the determination
14 you made when you applied the eight-percent investment return
15 assumption?

16 A 3.794 billion.

17 Q And when you applied the 6.75-percent investment return
18 assumption?

19 A 4.285 billion.

20 Q Okay. And I think earlier we talked about the actuarial
21 valuation report you were working with, and do I remember
22 correctly you were still working with the 2012 report or was
23 it the 2013?

24 A At this point in time, the 2012 was the most recent that
25 we had access to.

1 Q So let's look at Exhibit 1004 and, in particular, page 3
2 of our exhibit -- of that exhibit, I should say. What was
3 the AAL calculated by Gabriel, Roeder for this system for
4 that period of time?

5 A As of 2012, the AAL was 3.823 billion.

6 Q And how did it compare to what your replication procedure
7 determined?

8 A Well, actually that is a different date, so we did not
9 compare those two numbers.

10 Q I'm sorry. I had misunderstood. Let's look then at the
11 2013 actuarial valuation report. Do you have Exhibit 1024 in
12 front of you?

13 A I do.

14 Q Okay. Let's look, if we could, at the comparable table
15 in Exhibit 1024. That's on page 4 of the exhibit. Now, how
16 does the -- what did Gabriel, Roeder determine as of June
17 30th, 2013, was the AAL for the PFRS?

18 A 3.890 billion.

19 Q And how does that compare with the value you came up with
20 in your replication?

21 A It's in between two and three percent different.

22 Q Okay. Now let's go, if we could, to Exhibit 491. Do you
23 have Exhibit 491 before you?

24 A I do.

25 Q And Exhibit 491 is what?

1 A The report of our replication audit of DGRS.

2 Q Okay. And I think you described already the procedure.

3 Was anything done differently with GRS than you had done with
4 PFRS?

5 A No. The procedures were similar.

6 Q Let's look, if we could, at page 6 of Exhibit 491 and at
7 the table there.

8 MR. STEWART: If we could blow the table up, please.

9 BY MR. STEWART:

10 Q Now, the table has results under two different investment
11 return assumptions; correct?

12 A Yes.

13 Q One is 7.9 percent?

14 A Correct.

15 Q Where did that come from?

16 A That is the rate that is used in the annual actuarial
17 valuation.

18 Q Okay. And the other column has the investment return
19 assumption of 6.75 percent?

20 A Yes.

21 Q Where did that come from?

22 A That was requested by the city.

23 Q And so what did your procedure determine with respect to
24 the AAL for the GRS as of June 30th, 2013?

25 A Under the basis used in the valuation report, 3.601

1 billion and under the 6.75-percent return 3.978 billion.

2 Q Okay. Let's go, if we could, to Exhibit 1023, which is
3 in evidence, and let's go to page 4, please, A-4. It's the
4 one that in the lower right-hand corner has a control number
5 2982. There we go. This is the Gabriel, Roeder actuarial
6 valuation report for the GRS as of June 30th, 2013?

7 A Correct.

8 Q What had Gabriel, Roeder determined was the AAL for that
9 system on that date?

10 A 3.609 billion.

11 Q And how did that compare with the value you determined
12 using their investment return assumption?

13 A That was -- that differed by roughly \$8 million.

14 Q Out of a total of how much?

15 A 3.6 billion.

16 Q Okay. Now, after you had finished the replication audit,
17 did you -- did Milliman remain involved in the city's
18 matters?

19 A Yes.

20 Q And in the months following it, what -- without getting
21 into what you did, what generally was your role?

22 A We were asked to prepare various analyses using our
23 replication as a baseline in making adjustments.

24 Q Okay. And there was a mediation process going forward,
25 was there not?

1 A There was.

2 Q Okay. And without saying what you did, just tell us what
3 was your role in the mediation?

4 A We were --

5 MR. PEREZ: Your Honor, excuse me. I'm going to
6 object. If he's not going to say what his role is, then --

7 THE COURT: You can stay seated. You don't have
8 to --

9 MR. PEREZ: Yeah.

10 THE COURT: -- injure your back making objections to
11 evidence.

12 MR. PEREZ: Your Honor, to the extent that he's
13 going to go into the mediation, we're obviously not going to
14 be -- not going to be able to ask him any questions, so I'm
15 not sure what the intent of the question is.

16 MR. STEWART: I'm not sure what the intent of the
17 question was either actually, Judge. I'm going to ask the
18 witness this.

19 BY MR. STEWART:

20 Q After that, did you --

21 THE COURT: That is a withdrawal of the question,
22 yes.

23 MR. STEWART: Withdrawal.

24 BY MR. STEWART:

25 Q After that, did you remain involved in supporting the

1 mediation process?

2 A Yes.

3 Q Thank you. Now, by now, by the time we get to 2014,
4 you've been working with the city's two pension plans for how
5 long?

6 A We started in the middle of 2012.

7 Q About two years?

8 A With some gaps, but, yes, two years.

9 Q How well would you say you knew the plans by then?

10 A We had to know them very well to be able to perform the
11 replication.

12 Q Now, have you heard the term before a frozen plan?

13 A Yes.

14 Q What is a frozen plan?

15 A There's more than one variety of frozen plans, but the
16 most common definition would be where there is a freeze date.
17 Employees who were hired after the freeze date do not become
18 members of the plan, so they will not accrue benefits under
19 the plan. And employees who are working as of the freeze
20 date will cease accruing any benefits in the future.

21 Q Okay. Who makes the decision to freeze a plan?

22 A In my experience, in a corporate sector plan the plan
23 sponsor sometimes has the unilateral right to do so.
24 Sometimes it is subject to collective bargaining.

25 Q Let me direct your attention, if I could, to the date of

1 July 18, 2013. Do you understand that was the date --

2 THE COURT: Excuse me one second.

3 MR. STEWART: Yes.

4 THE COURT: The answer you just gave, you said that
5 was in the corporate setting?

6 THE WITNESS: Yes.

7 THE COURT: Is there another answer for the public
8 setting -- sector setting?

9 THE WITNESS: Well, the plan freezes are very common
10 in the corporate sector, very uncommon in the public sector,
11 and I think that's really a legal matter as to who gets to
12 freeze the plan that I can't answer to.

13 THE COURT: Thank you, sir.

14 BY MR. STEWART:

15 Q So let me direct your attention, if I could, to July 18,
16 2013. Do you understand that was the date upon which the
17 city filed its petition in bankruptcy?

18 A Yes.

19 Q As of that date, do you know whether or not the GRS plan
20 was frozen?

21 A It was not.

22 Q How do you know that?

23 A There was no piece of information that we provided, were
24 provided or found that said the plan was frozen.

25 Q And in your dealings with the city and with the plan, who

1 said anything to you about it being frozen?

2 A Nobody said anything to us about it being frozen.

3 Q And as of that date, can you tell us whether or not the
4 PFRS plan was frozen?

5 A It was not.

6 Q Subsequent to that time, have there been proposals that
7 the plan should be frozen?

8 A Yes.

9 Q Do you know whether that has happened yet?

10 A I do not.

11 Q Now, let me ask you a couple of --

12 MR. STEWART: Let's put up, if we could, Exhibit
13 632.

14 BY MR. STEWART:

15 Q Mr. Bowen, do you see Exhibit 632 on the screen in front
16 of you?

17 A Yes.

18 Q What is Exhibit 632?

19 A There is a formula at the top which is a -- I'll say the
20 generic template of how a final average pay pension plan
21 calculates a benefit, and there is a diagram below that which
22 is illustrative of a member moving through their working
23 career and their retirement years.

24 Q Okay. So the formula -- and who prepared this?

25 A Jones Day.

1 Q And have you looked at it?

2 A Yes, I have.

3 Q Is it accurate?

4 A It's a very high-level representation, so, yes, it's
5 accurate.

6 MR. STEWART: Your Honor, I would move 632 into
7 evidence as a demonstrative exhibit only.

8 MR. WAGNER: That's fine, your Honor.

9 THE COURT: All right. For that purpose, it is
10 admitted.

11 (City Exhibit 632 received at 10:31 a.m.)

12 BY MR. STEWART:

13 Q So, if we could, Mr. Bowen, let's look at the top.
14 There's a formula. Could you tell us, first of all, what the
15 formula says and, second, what it is?

16 A Okay. It says pension equals "X" percent times service
17 times final average pay, and this formula is used to
18 determine the pension that a member will receive based upon
19 the service they have rendered and their final average pay
20 and the "X" percent multiplier, which is part of the pension
21 plan design.

22 Q So where does the "X" percent come from?

23 A The "X" percent is -- I believe that's a statutory
24 figure, but it is set at the -- it is set as part of the
25 benefit design to determine the overall level of the benefit.

1 Q What does "service" mean?

2 A Service is basically the amount of time that the member
3 works for the city.

4 Q Okay. And what is final average pay?

5 A Final average pay is in most cases for the city's plans
6 three highest years of pay at the end of the period of
7 service.

8 Q Okay. So let's look at our chart. On the far left
9 corner we have DOH. What does that stand for?

10 A The date of hire.

11 Q Okay. Now, have you heard the term "accrual" as that
12 term is used in pension plans?

13 A Yes.

14 Q What does "accrual" mean?

15 A As a synonym, you could use the word "earned." You
16 accrue your benefits over your career. You're earning your
17 benefits as you're working.

18 Q So if I worked for the city, and after one year when do I
19 start accruing my benefits?

20 A You start accruing them upon hire.

21 Q The day I started?

22 A Yes.

23 Q Okay. Now, have you -- when do my benefits stop
24 accruing?

25 A When you separate from service.

1 Q Okay. Now, is there a term called "vesting"? And there
2 is vesting on our exhibit as well.

3 A Yes, there is.

4 Q What does "vesting" mean?

5 A If you discontinue your service with the plan sponsor
6 prior to reaching the vesting date, in this example, ten
7 years, you forfeit your right to receive a pension.

8 Q And what is the vesting period for the GRS and the PFRS?

9 A With some exceptions, it's ten years.

10 Q Okay. So back to me again. Let's assume I work for the
11 city and quit in year nine. What are my vested benefits?

12 A None.

13 Q Why?

14 A Because you have not rendered the requisite period of
15 service.

16 Q How many years have I accrued?

17 A Nine.

18 Q But I still get no benefits?

19 A Correct.

20 Q If I work to 11 years, then quit, how many years have I
21 accrued?

22 A Eleven.

23 Q And how many have I vested?

24 A Eleven.

25 Q So what benefits do I get under the formula here, and

1 what's the service -- the value of the service variable in
2 our equation?

3 A At that -- in that example, it would be 11.

4 Q Okay. Now, up here we have something called final
5 average pay. Let me ask this. What do the words "final pay"
6 mean in the phrase "final average pay"?

7 A They're meant to denote the pay near the end of your
8 period of service, end of your career.

9 Q And average is the three years you told us about?

10 A Yes, for these systems.

11 Q Now, in calculating the AAL for a system, is one of the
12 benefits a system takes into account the future cost it's
13 going to have for people who have not retired yet?

14 A Yes.

15 Q How does the system know what their final average pay is?

16 A One of the actuarial assumptions used in the valuation is
17 a projection of salaries over time.

18 Q So the system projects the final average pay of people
19 who have not yet reached that segment of their career where
20 they measure the final average pay; is that correct?

21 A Everything is projected, so, yes.

22 Q Okay. Now, what assumptions does -- do these two plans
23 use to project that final average pay?

24 A Well, there -- I mean there is a salary assumption that's
25 the baseline for projecting what the salary would be, and

1 there are additional assumptions that determine the
2 probability of separating from service in each future year,
3 termination if you're not retirement eligible and then
4 ultimately retirement.

5 Q And then are there assumptions about wage increases and
6 inflation?

7 A I kind of consider them all baked into the salary
8 assumption scale, yes.

9 Q But they're part of the salary assumption?

10 A Yes.

11 Q Where do we find that?

12 A They can be listed in the valuation report.

13 Q So the actuarial valuation reports that are already in
14 evidence set those forth?

15 A Yes.

16 Q And by the way, are both GRS and PFRS final average pay
17 plans?

18 A Yes.

19 Q Now, let's move on. Did there come a time more recently
20 in April when you were asked to perform other calculations
21 from the information stored in the VAL 2000 system?

22 A Yes.

23 MR. STEWART: And let's put up, if we could --
24 pardon me -- Exhibits 473 -- pardon me -- and 474. And, your
25 Honor, both of these are also exhibits that the COPs parties

1 have put on their list as 1011 and 1012 respectively.

2 BY MR. STEWART:

3 Q Before we go further, Mr. Bowen, could you just tell us
4 what these two letters are?

5 A Okay. Exhibit 1011 is regarding DPFRS, and we were asked
6 to calculate the funded status in 2023 under a variety of a
7 specified scenarios.

8 Q And what is the other letter?

9 A That concerns DGRS, and we were asked -- we were given a
10 desired target to be hit in terms of funded status in 2023
11 and were asked to calculate the employer contributions that
12 would be required to do so.

13 Q And who prepared these two letters?

14 A They were both prepared by Milliman.

15 Q Okay. And did you -- pardon me. What was your role in
16 the letters?

17 A I was involved in the process from beginning to end.

18 Q And did you sign both?

19 A Yes.

20 Q And what did you do before signing to assure yourself of
21 the accuracy of the matters set forth in the two letters?

22 A As I mentioned before, we have a series of peer review
23 checks, and they apply to the various portions of the overall
24 procedure.

25 MR. STEWART: Your Honor, I'd move into evidence

1 both exhibits.

2 MR. WAGNER: No objection.

3 THE COURT: Thank you. They are admitted.

4 (City Exhibits 473 and 474 received at 10:37 a.m.)

5 BY MR. STEWART:

6 Q Let's start, if we could, with Exhibit 473, and I notice
7 I'm using the city's exhibit number, and you used the COPs
8 exhibit number. Why don't we use the city's exhibit number
9 for sake of simplicity, and that is 473?

10 A Okay.

11 Q And if we could, let's spend a minute on the structure of
12 the letter here. Once again, the first page sets forth some
13 background of the scope and intent of the exercise; is that
14 correct?

15 A Yes.

16 Q And then on page 2 we have the paragraph entitled
17 "Project Description"?

18 A Correct.

19 Q What is the project description of this project?

20 A There are several bullet points of inputs that were
21 provided to us, and we were asked to use all of those and
22 project the funded status -- excuse me -- and also the
23 unfunded liability of DPFRS in 2023.

24 Q Okay. So at the very first lines -- pardon me -- speaks
25 of estimating the funded status and unfunded liability for

1 that Retirement System; correct?

2 A Yes.

3 Q And then what are the bullet points again?

4 A These are the series of inputs that were provided to us
5 by the city to be used in this exercise.

6 Q And what role did you have in choosing those inputs?

7 A We did not choose them. They were provided to us.

8 Q In other words, they were givens in this work?

9 A Correct.

10 Q All right. What did you do then with these assumptions?

11 A I'll take the second bullet point to start with, a 55-
12 percent reduction to future COLAs moving from two and a
13 quarter percent to one percent. That is a change to "B," so
14 we took our baseline valuation and made that adjustment as
15 we're going to be determining a different value of "B."

16 Q Okay. Once again, were you using the VAL 2000 software
17 that you've described to us?

18 A Yes.

19 Q And that had the other values in it from your previous
20 work. Am I right?

21 A Yes.

22 Q Okay. Now, after putting these assumptions into the
23 calculation engine, did you get results? Did the results
24 come out?

25 A Yes.

1 Q And let's look at the next page, the table in the next
2 page. What does that table set forth?

3 A We were asked to value two separate employer contribution
4 streams and two separate market value rates of return for
5 2013-14, which led us to four scenarios, and the results are
6 in the two right-hand columns. The third column is the
7 projected funded status under each scenario, and the final
8 column is the estimated dollar amount of the unfunded
9 liability in 2023.

10 Q So if we take the first row, that has an assumption of
11 employer contributions of \$260.7 million and a market rate of
12 return of 11.9 -- 59 percent; correct?

13 A Yes.

14 Q And those are the assumptions you were given?

15 A Yes.

16 Q And then the next two columns show us what?

17 A The projected results in 2023 under those assumptions.

18 Q Okay. And you were being asked to forecast what the
19 situation would be in 2023; correct?

20 A Yes.

21 Q Okay. Now, if we go to the very end, just a few pages
22 back there are a series of tables. Just generally can you
23 tell us what these are?

24 A Yes. We were asked -- in addition to providing the
25 results on page 3, we were asked to provide year-by-year

1 information on various items, assets, liabilities, cash
2 flows, from the period 2014-15 up through 2023.

3 Q I see an abbreviation BOY here. What does BOY stand for?

4 A Beginning of year.

5 Q Okay. And if we look at this particular page -- I guess
6 it's Exhibit 1 -- and the table, we have the actuarial
7 accrued liability at BOY. Do you see that?

8 A I do.

9 Q Okay. And then below that unfunded liability at BOY;
10 correct?

11 A Yes.

12 Q Okay. And if you go all the way over to the right, does
13 that -- do those numbers sum up the year-by-year values in
14 those rows?

15 A Yes. Those are the year-by-year values.

16 Q Okay. Let's now, if we could, look at Exhibit 474. And
17 this is the letter you wrote with respect to the GRS. Am I
18 right?

19 A Correct.

20 Q So let's start again with page 2 in the project
21 description.

22 MR. STEWART: And let's blow up that first
23 paragraph.

24 BY MR. STEWART:

25 Q And what was the project that you were asked to do that

1 is recounted here in Exhibit 474?

2 A In this situation, the target was set as having a 70-
3 percent funded ratio, and that's the funded status we
4 referred to earlier, in 2023. We were given a variety of
5 input parameters and asked to solve for the amount of
6 employer contributions that would be needed based on those
7 parameters to hit the goal.

8 Q Okay. What assumption were you given by the city in
9 terms of the investment return assumption?

10 A This was 6.75 percent.

11 Q Okay. And then am I correct that in addition to that,
12 there were city-specified annual contributions to the DWSD?

13 A The city specified the methodology, yes.

14 Q Okay. And then there was going to be a recoupment from
15 the annuity savings fund?

16 A Yes.

17 Q Did both of those require you to have the system do some
18 calculations before you could come up with a final answer?

19 A Yes.

20 Q Okay. So let's, if we could, go to the next page. And
21 by the way, let's just frame this a little bit. One of the
22 things you had to do was to determine the DWSD contribution
23 projection?

24 A Yes.

25 Q And the other was the ASF recoupment?

1 A Yes.

2 Q So let's go through those in that order. The top of the
3 next page, page 3, is that the section where you deal with
4 the contribution projection?

5 A That's the beginning of the section, yes.

6 Q Okay. And, once again, we have bullet points. What are
7 those bullet points?

8 A Those are the parameters that were used in the DWSD
9 contribution projection.

10 Q Okay. Now, if we look at the main body of that
11 paragraph, it -- oops -- refers to a city-specified
12 contribution schedule. Do you see that?

13 A Yes.

14 Q And what was that contribution schedule that the city
15 specified?

16 A I'll say to be maybe more precise, the city specified
17 that we should do a valuation of DWSD effectively only, a
18 mini valuation, their portion of the overall system, and once
19 that unfunded liability is known to develop a nine-year
20 contribution.

21 Q Okay. And did you do that?

22 A Yes.

23 Q Let's look, if we could, at page 6 of our exhibit. And
24 do you see the header that says "results"? Okay.

25 A Yes.

1 Q Does that first paragraph set forth what you determined
2 when it came to the DWSD contribution?

3 A Yes.

4 Q And what did you -- what did you determine?

5 A It's in the last sentence, annual contribution of 45.4
6 million per year.

7 Q Okay. And as part of this, did the system also determine
8 the unfunded liability for DWSD as of July 1, 2014?

9 A Yes.

10 Q And what was that number?

11 A That is the 292.1 million in the second line.

12 Q Okay. Now, I think we were talking about the recoupment
13 from the annuity savings funds, and let's go, if we could,
14 now to page 3, to the very bottom of page 3.

15 MR. STEWART: Let's blow that up, if we could.

16 BY MR. STEWART:

17 Q Under ASF recoupment, it talks about the city providing
18 census data file. Do you see that?

19 A Yes.

20 Q Who provided the census data file to you?

21 A It was actually provided to us by Conway MacKenzie.

22 Q And who from Conway MacKenzie?

23 A Chuck Moore.

24 Q Okay. And what was this data file?

25 A This was a data file, as it mentions here, 13,650

1 members, so that's not everybody, but that is the subset of
2 members that the city deemed to have received excess interest
3 credits in their accounts.

4 Q Okay. Let's go to the next page, please. Let's look at
5 the top carryover paragraph. That's all we need to see.
6 Just reading, it says the interest credits were 387.4 million
7 as of June 30th, 2013; is that correct?

8 A Yes.

9 Q Now, then you did procedures against that data file;
10 correct?

11 A Yes.

12 Q Fair to say you were not able to match all the census
13 data?

14 A Yes.

15 Q Let's look at the table, the line that says "total."
16 What does that represent?

17 A Well, we received this census data file separate from the
18 census data that we already had in VAL 2000 in our
19 replication, so the first task was to match these excess
20 interest credit amounts by individual member into our
21 valuation system, and they did not all match.

22 Q So in your table you have numbers of people. You also
23 have dollar numbers.

24 A Yes.

25 Q What do those two numbers add up to?

1 A The count of people adds up to the 13,000-some-odd that
2 was on the last page, and the excess interest amounts add up
3 to the 387.4 million at the top of this page.

4 Q Okay.

5 MR. STEWART: Now, let's, if we could, scroll down
6 to the next table. Blow that up.

7 BY MR. STEWART:

8 Q And at the top the language says, "For this analysis, the
9 maximum recoupment amount for an individual member was capped
10 at 20 percent of the highest ASF balance during the excess
11 interest determination period." Who capped it at 20 percent?

12 A That was a decision made by the city.

13 Q Not you?

14 A No.

15 Q Okay. So what does this table show us?

16 A This table shows that once the -- I'll say the original
17 excess interest amount that was calculated was subjected to
18 the cap, the total possible recoupment amount, which is in
19 the third column, was reduced.

20 Q To what number?

21 A 226.5 million.

22 Q Okay. And was that the number you took into account when
23 you went back to the beginning to determine the contribution
24 level the city would have in the coming years?

25 A Yes. This was worked into this valuation pass.

1 Q Now, before I --

2 MR. STEWART: Let's go to the next page, if we
3 could, and before we leave this subject, could you blow up
4 the top three bullet points?

5 BY MR. STEWART:

6 Q Was there a methodology that the city was going to use to
7 recoup these excess payments from the ASF?

8 A Yes.

9 Q And fair to say there were three categories of people
10 that had to be recouped from?

11 A Yes.

12 Q And tell us, if you could, generally what the recoulement
13 method was.

14 A Okay. What's highlighted on the screen now is for active
15 members and deferred vesteds, deferred vesteds being members
16 who have ceased working for the city but are not yet in pace;
17 that is, receiving a benefit. So, quite simply, the approach
18 in our valuation procedure was that if a member's excess
19 interest amount was lower than the current value of their
20 account, it would be subtracted, and that was it.

21 Q Just offset?

22 A Just offset directly, yes.

23 Q Second category?

24 A There are members who have a larger excess interest
25 amount than their current account because there is the

1 ability to withdraw some funds while in service, so for those
2 members it was a two-part test subtracting the ASF account to
3 the extent possible and then for the remainder of the amount
4 to be recouped projecting an offsetting against the ultimate
5 expected pension.

6 Q Okay. And how did you determine how to -- what the
7 amount of the offset should be?

8 A The amount of the offset was -- as summarized in the
9 chart on the preceding page, it was the excess interest
10 amount provided by the city ultimately subjected to the 20-
11 percent cap.

12 Q Okay. And was this done in a sense with a reverse
13 annuity; in other words, a certain amount would be deducted
14 from the benefit check?

15 A Yes.

16 Q And how was that calculated?

17 A To convert a lump sum to an annuity, we have an interest
18 and a mortality assumption.

19 Q Okay. Is that something you came up with?

20 A It was provided to us by the city.

21 Q Okay. And the last category? Who were they?

22 A The third bullet point here is really a subset of the
23 second, and these are -- this is the specific class of
24 members who have no account, so there is no subtraction
25 possible, and the entire recoupment amount is then projected

1 and offset against the pension.

2 Q Okay. Now, lets go, if we could, to page 6 and to the
3 last paragraph on the page. Now, by the time -- this is the
4 results paragraph for your letter; is that correct?

5 A Yes.

6 Q Okay. Now, by the time you've gotten here, you've done
7 the DWSD calculation; correct?

8 A Correct.

9 Q The ASF calculation; correct?

10 A Correct.

11 Q And you're now able to finish the calculation you were
12 asked to do?

13 A Yes.

14 Q What did you determine?

15 A Well, we were provided with certain specified inputs, so
16 we used those, and that's the 150.8 million from non-DWSD
17 sources. We calculated the DWSD based upon the methodology,
18 and that became an input. In total what we did is we
19 calculated the total amount of employer contributions needed
20 during this time period, and since there were certain -- you
21 know, those two streams of specified employer -- two streams
22 of specified contributions, we then determined the residual
23 employer contribution that would be needed to hit the 70-
24 percent funded target.

25 Q Okay. So the bullet points, once again, are either

1 assumptions given to you or the results of your previous
2 calculations you just told us about; correct?

3 A Yes.

4 Q So let's look at the main paragraph. What is it you
5 estimated would be the additional contribution per year from
6 the employer from 2015-16 to 2022-23 to have a 70-percent
7 funded status as of the end of fiscal year 2023?

8 A \$19.9 million per year.

9 Q Okay. Based on all the assumptions that you see here?

10 A Yes.

11 Q And based on the other calculations in your work;
12 correct?

13 A Yes.

14 MR. STEWART: Okay. Thank you, Mr. Bowen. That's
15 all I have.

16 THE COURT: All right. Let's take a brief recess
17 now, reconvene at 11:10, please, for cross-examination.

18 THE CLERK: All rise. Court is in recess.

19 (Recess at 10:54 a.m., until 11:12 a.m.)

20 THE CLERK: All rise. Court is back in session.
21 You may be seated.

22 MR. WAGNER: Your Honor, again, Jonathan Wagner on
23 behalf of the COPs. I have binders -- may I pass them out --
24 that have the exhibits?

25 THE COURT: Yes, please.

1 MR. WAGNER: May I proceed?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. WAGNER:

5 Q Mr. Bowen, nice to see you again. You're dressed a
6 little bit better than last time I saw you last night in the
7 elevator.

8 A Thank you.

9 Q Mr. Stewart took you through some of the work that you
10 did or Milliman did in connection with this matter; correct?

11 A Yes, he did.

12 Q But he didn't take you through all the work, did he?

13 A He did not.

14 Q And you gave some testimony about the 6.75 rate of
15 return. Do you recall that?

16 A Yes.

17 Q And Mr. Stewart showed you several letters that Milliman
18 prepared in connection with this matter?

19 A Yes.

20 Q But he didn't show you your November 4, 2013, letters,
21 did he?

22 A He did not.

23 Q And in those letters Milliman concluded that a return
24 assumption of 7.2 percent would better reflect the expected
25 investment returns for both plans net of expenses without any

1 bias; correct?

2 A You used the phrase "better reflect." I would say that
3 was the calculation of median expected return.

4 THE COURT: Is the letter you're referring to in
5 evidence?

6 MR. WAGNER: Yes, it is, but we'll put them up on
7 the screen. Can you put up COPs Exhibit 1028, which is City
8 Exhibit 495? There's been no objection.

9 BY MR. WAGNER:

10 Q Can you turn to page 4 of the letter in your book or you
11 can look at it on the screen?

12 A It's rather tight up here for the book.

13 Q Okay. If you look at it on the screen, the paragraph
14 beginning "Based on the above results," do you see that?

15 A I do.

16 Q Can you read that, sir?

17 A "Based on the above results, we believe that an
18 assumption of 7.2 percent would better reflect expected
19 investment returns net of plan investment expenses and
20 provide an unbiased expectation of future results."

21 Q And that's with respect to GRS; correct?

22 A I can't tell from looking at this page.

23 Q Well, if you look at the first page of the document,
24 you'll see that it pertains to GRS. Can you turn to page 1?
25 Do you see that?

1 A Yes. This says DGRS.

2 MR. WAGNER: And can you put up Exhibit 1029, City
3 Exhibit 496?

4 BY MR. WAGNER:

5 Q That's your letter with respect to PFRS; correct?

6 A Yes, it is.

7 Q And can you turn to page 4? Same paragraph, "Based on,"
8 can you read that, sir?

9 A "Based on the above results, we believe that an
10 assumption of 7.2 percent would better reflect expected
11 investment returns net of plan investment expenses and
12 provide an unbiased expectation of future results."

13 Q And that's important information, isn't it?

14 A I believe that it is.

15 Q And at the time you wrote these letters, you believe the
16 recommended investment rate assumptions you presented were
17 the best recommendations based on the data available to you;
18 correct?

19 A At the time, yes.

20 Q And you don't have any concerns or issues with respect to
21 the investment returns that you recommended in those letters;
22 correct?

23 A No, I do not.

24 Q And Milliman did the best job it could coming up with the
25 7.2 percent; correct?

1 A Yes, we did.

2 Q And you did the best job you could; right?

3 A Yes, I did.

4 Q And there are no mistakes in those letters, are there?

5 A They've been through our peer review process. I will

6 assume there are no mistakes.

7 Q Very heavily vetted; correct?

8 A Correct.

9 Q The letters were cc'd to people from the city; right?

10 A They were.

11 Q The letters went to Evan Miller of Jones Day. You know

12 who he is?

13 A They were addressed to him, yes.

14 Q And you have confidence in those numbers, don't you?

15 A Yes.

16 Q And you stand by those letters?

17 A Yes.

18 Q And, by the way, the period in those letters, if I'm

19 right, is you did a 30-year analysis and a 75-year analysis;

20 correct?

21 A I would need to see the chart put in front of me, but we

22 look at several different time durations in our capital

23 market assumptions model.

24 Q Well, can you look at page 4, sir, and confirm to me on

25 either of those documents that you did a 30-year analysis and

1 75-year analysis?

2 A Yes. The table shows one year, thirty years and seventy-five years.

4 Q And of those, you believe the 75-year was the best
5 analysis to use; correct?

6 A Yes, for an ongoing pension plan, absolutely.

7 Q Now, Mr. Stewart also showed you numbers concerning
8 actuarial accrued liability; right? Do you recall that?

9 A Yes, he did.

10 Q He didn't show you the unfunded actuarial accrued
11 liability numbers, did he?

12 A For DWSD, I believe we discussed that, not for the
13 systems in total.

14 Q But he didn't put that up on the screen. He just went
15 through the liabilities; right?

16 A Yes.

17 Q And you have to subtract the assets from the liabilities
18 to determine the unfunded portion; correct?

19 A That is true.

20 Q Okay. Now, let's go back to the beginning. Would you
21 believe -- would you agree with me, sir, that it's important
22 for an actuary to get -- to use the right input?

23 A It's very difficult to answer that question the way it's
24 asked because I'm not aware of a definition of the right
25 inputs.

1 Q Let me rephrase it. It's important for an actuary to use
2 accurate inputs?

3 A I would give you the same response.

4 Q You have your deposition transcript at the front of the
5 binder. Can you look at it, sir?

6 MR. STEWART: Page and line?

7 MR. WAGNER: 157, line 10.

8 BY MR. WAGNER:

9 Q Do you have it there, sir?

10 A I do.

11 Q Were you asked the following question, and did you give
12 the following response at your deposition?

13 "Question: Well, with respect to the inputs you
14 just mentioned, am I right that it's important to
15 use accurate inputs?"

16 Answer: Generally speaking, it's important to
17 use accurate inputs."

18 Did you give that answer?

19 A That is reflected in the transcript.

20 Q And would you agree with me that it's important for an
21 actuary to use reasonable assumptions?

22 A I would agree with that.

23 Q And that's something you strive to do; correct?

24 A Yes.

25 Q And would you agree with me that Detroit is a very

1 important assignment?

2 A Yes, I would.

3 Q That's why we're all sitting here; right?

4 A Yes, it is.

5 Q Okay. Let me switch gears for a second and ask you about
6 Mr. Fornia, who's been retained as an expert for the COPs.

7 You know Mr. Fornia; right?

8 A I do.

9 Q And you've worked with him?

10 A Yes, I have.

11 Q And you've invited him to speak at at least one Milliman
12 event?

13 A Yes.

14 Q Presentation was well-received by Milliman?

15 MR. STEWART: Objection, your Honor. What's the
16 relevance of this? And I don't think vouching or reverse
17 vouching for experts is appropriate.

18 MR. WAGNER: It's a point that Mr. Hackney raised.
19 I could call him as part of our direct case, but --

20 THE COURT: I'm not sure you could actually.

21 MR. WAGNER: Okay.

22 THE COURT: The objection is sustained.

23 BY MR. WAGNER:

24 Q Now, I'm right that Milliman performed an actuarial
25 exercise to calculate the size of the pension claims; right?

1 A No.

2 Q I'm sorry?

3 A No. I would not say that's correct.

4 Q Okay. Well, can you look at your April 17 letter?
5 That's Exhibit 1033.

6 A I have a May 5th letter, 1033.

7 Q Okay. And if you look at page 2, this is a letter
8 concerning GRS; correct?

9 A Yes. I apologize. I thought you were talking about did
10 Milliman determine the claim. Milliman did allocate the
11 claim for --

12 MR. STEWART: Object. This could be fixed, but the
13 letter is not properly redacted to eliminate mediation
14 privileged material.

15 MR. WAGNER: I'm not -- I don't know what they're
16 referencing, but I'm obviously not going to go into any
17 material that may be in here that should be redacted.

18 MR. STEWART: Well, I'm not suggesting you are.

19 THE COURT: Well, hold on one second. What exhibit
20 number are we on here?

21 MR. WAGNER: This is Exhibit 1033 for which there
22 was no objection posed by the city in the pretrial order.

23 THE COURT: Is it in evidence?

24 MR. STEWART: I don't believe it is, Judge.

25 MR. WAGNER: Well, it's technically in evidence

1 based on your Honor's ruling that unobjected to documents are
2 in evidence, but we can -- we will fix whatever needs to be
3 fixed if there is something that needs to be fixed.

4 MR. STEWART: I have no objection to fixing it. I
5 just wanted to make sure before it goes into a public record
6 that it is -- that the redaction issue is fixed.

7 THE COURT: Okay. Let me ask the two of you to just
8 work that out and --

9 MR. WAGNER: That's fine.

10 THE COURT: -- let me know.

11 MR. WAGNER: That's fine. And let me just go back
12 and make clear that I move Exhibits 495, which is our Exhibit
13 1028, and 496, which is 1029, into evidence.

14 MR. STEWART: No objection.

15 MR. WAGNER: Okay.

16 THE COURT: All right. They are admitted.

17 (City Exhibits 495 and 496, COPs Exhibits 1028 and 1029
18 received at 11:23 a.m.)

19 BY MR. WAGNER:

20 Q Okay. Now, sir, do you see under aggregate claim the
21 paragraph lists assets for GRS as about 2.099 billion;
22 correct?

23 A I see that.

24 Q Okay. And if you turn a few pages -- it's actually a
25 page that Mr. Stewart showed you. If you turn to the April

1 17 letter, which is attached to this letter, and that's how
2 it was produced to us, if you turn to page 6 of the April 17
3 letter, do you see that there are assets -- I'm sorry -- that
4 there are liabilities of 3978 with a 6.75 return rate? Do
5 you see that?

6 A Yes.

7 Q So 3978 in liabilities minus 2.099 in assets is about
8 1.879 billion; correct?

9 A I didn't follow the math that fast, but that's in the
10 right neighborhood.

11 Q Okay. And can we agree that that's the number in the
12 disclosure statement that sets out the size of the GRS claim,
13 or should I -- do I have to show you the disclosure
14 statement?

15 A No. I can agree that that's the number.

16 | O Okay.

17 MR. WAGNER: That's, your Honor, page 38 of the
18 disclosure statement.

19 BY MR. WAGNER:

20 Q Now, let's go through the exercise with respect to PFRS.
21 Can you turn to Exhibit 1034 in the book, page 2 of that
22 document?

23 MR. STEWART: Objection. Your Honor, we have the
24 same redaction issue with this exhibit, although I assume we
25 can work it out.

1 MR. WAGNER: That's fine.

2 THE COURT: Thank you.

3 BY MR. WAGNER:

4 Q Do you see under aggregate claim you list overall
5 liabilities of 4.825 billion? Do you see that?

6 A Yes.

7 Q And you see assets of 3.035 billion? Do you see that?

8 A Yes.

9 Q And that's a net of about 1285 -- 1.25 billion?

10 A Yes, it is.

11 Q And would you take my word for it that that's the amount
12 in the disclosure statement for the PFRS claim?

13 A I will.

14 Q So if I'm right, it's fair to say that the figures for
15 the amount of the claim came from these letters; correct?

16 A That's fair.

17 Q Okay. And, again, you use a 6.75 rate here; right?

18 A Yes.

19 Q Didn't use the risk-free rate?

20 A We did not use a risk-free rate.

21 Q Okay. Now, let's get into what's part of the claim. For
22 both GRS and PFRS in these letters, you use something called
23 the entry age normal method; right?

24 A Yes.

25 Q Okay. And the assumption underlying those letters was

1 that the plans would be ongoing; correct?

2 A This was a replication of the valuation of an ongoing
3 plan.

4 Q Okay. And when one uses the entry age normal method for
5 an ongoing plan, one is going to include liabilities that
6 haven't vested yet; correct?

7 A That is true.

8 Q And as Mr. Stewart elicited from you, when you do that
9 calculation, you're also going to include benefits with
10 future salary increases included; right?

11 A That is correct.

12 Q And you're going to include calculation that includes
13 future wage benefits; right?

14 A That's a function of the future salary, yes.

15 Q And it's going to include an element of inflation; right?

16 A That underlies salary increases, yes.

17 Q Now, sir, a frozen plan is a different ball game with
18 respect to treatment of future salary increases and future
19 services, is it not?

20 A It can be.

21 Q And when you do the calculation for a plan freeze, you
22 eliminate future service and future salary; right?

23 A To the extent it has been seized for the participants in
24 the plan, the members in the plan.

25 Q So one would see no future salary increases once a plan

1 is frozen; right?

2 A Under a hard freeze scenario, that's correct.

3 Q And the liability would drop; correct?

4 A That is correct.

5 Q And if a plan were frozen, you wouldn't include future
6 wage inflation; right?

7 A Since that is a subset of the salary increase, that's
8 correct.

9 Q Okay. And just to finish up this --

10 THE COURT: I'm a little confused about your
11 questions here.

12 MR. WAGNER: Okay.

13 THE COURT: Are you asking about some hypothetical
14 freeze or the Detroit freeze?

15 MR. WAGNER: I'm asking about -- well, my questions
16 are general questions. I believe -- we believe that --

17 THE COURT: Okay. Then they're irrelevant to me.

18 MR. WAGNER: Well, they -- we believe they apply to
19 the Detroit freeze, and I'm laying the groundwork for future
20 testimony on this issue.

21 THE COURT: Ask the witness about the Detroit
22 freeze.

23 BY MR. WAGNER:

24 Q Does the Detroit freeze include -- the Detroit plan is
25 frozen; correct?

1 A To my knowledge. I'm not sure of the legal status today.

2 Q Okay. And do you know whether if you -- when you freeze
3 those plans, whether future inflation should be included? Do
4 you know one way or the other?

5 A The proposal is a hard freeze.

6 Q Okay. And would you give the same answer with respect to
7 vested benefits?

8 A I'm not sure.

9 THE COURT: What's the question as to vested
10 benefits?

11 BY MR. WAGNER:

12 Q The question is with the hard freeze, you wouldn't
13 include benefits -- when you did your calculation of the
14 liability, you wouldn't include benefits that haven't vested;
15 right?

16 A In my experience, I've seen that done in the corporate
17 sector. I'm not sure of the legal status of vested benefits
18 in the governmental sector.

19 Q Okay. And with a frozen plan like Detroit's, you would
20 not include in calculating the size of the claim, the amount
21 of unfunded liability, you wouldn't include the calculation
22 that takes into account wage inflation, would you?

23 A For a frozen plan, there would be no future wage
24 inflation in the calculation.

25 Q And let me just finish up this --

1 THE COURT: I'm sorry. Does that answer apply to
2 the Detroit plan or just some generalized frozen plan?

3 THE WITNESS: The proposal for the Detroit plan is
4 that the plan would be frozen and future wages past the
5 freeze date would not ultimately impact the member's
6 calculations.

7 THE COURT: Thank you.

8 BY MR. WAGNER:

9 Q Okay. By the way, just to finish up this topic, do you
10 know what the unit cost method is? Ever hear of that term?

11 A If you mean the unit credit cost method, yes.

12 Q Yes. And that's a method that looks at past service and
13 past salary; right?

14 A That is correct.

15 Q Okay. Now, let's talk about investment rates. Am I
16 right that the discount rate assumption is arguably the most
17 critical assumption in determining pension obligation?

18 A Arguably, yes.

19 Q And the investment return assumption forms the basis for
20 the assumed asset returns of investments within a pension
21 system; correct?

22 A As far as it goes, yes.

23 Q And the investment rate -- the investment return
24 assumption for public -- for a public plan is also used to
25 measure the liabilities by discounting future payment

1 benefits at the assumed rate of return?

2 A That is the common practice.

3 Q And that's the way you've always seen it done; right?

4 A For purposes of funding, yes.

5 Q I'm also right that the funded status of a plan would
6 decrease if you used a lower investment rate?

7 A That is correct.

8 Q And the higher the investment rate assumption, the better
9 the funding status of the plan; correct?

10 A In both cases, the current measure of the funded status,
11 yes.

12 Q Okay. And now just a couple more questions about risk-
13 free rate. You're not aware of any public pension funds that
14 have measured liabilities discounting future benefit at any
15 rate other than the assumed investment return; correct?

16 A No. I am.

17 Q Well, you weren't aware at your deposition; correct?

18 A I don't -- I can say I am. I was deposed for three days.
19 If we have a question which is slightly different than I
20 answered, that's possible.

21 Q Okay. But Milliman doesn't use the risk-free rate in
22 calculating a valuation rate or return rate; correct?

23 A That's a very broad question, so I would have to say it's
24 not correct in all cases.

25 Q Can you turn to your deposition, page 237, line 25?

1 MR. STEWART: I don't have --

2 MR. WAGNER: I'm sorry. We'll come back to that,
3 your Honor.

4 THE COURT: Okay.

5 BY MR. WAGNER:

6 Q Now, let's get back to your November letters. There came
7 a time when you were asked to present an analysis for
8 recommended return on investment for PFRS and GRS; correct?

9 A True, yes.

10 Q And those are the -- your work is set out in the November
11 4 letters; correct?

12 A Yes.

13 Q And the assumptions in your analysis were based on the
14 asset allocations for GRS and PFRS at the time; correct?

15 A The most recent asset allocations that were made
16 available to us; correct.

17 Q And you've not seen any different asset allocations for
18 those two funds since then; correct?

19 A I have not been involved in the --

20 Q You've not seen any change in the asset allocation
21 between November 4 and today; correct?

22 A I have not looked at new allocations or have not, yeah.

23 Q Now, there is -- the plan doesn't use your 7.2-percent
24 rate, does it?

25 A Neither rate does now. Neither plan uses that rate.

1 Q It uses 6.75; right?

2 A Oh, the plan of adjustment. The system actuary does not
3 use it nor does the plan of adjustment.

4 Q Okay. I'm sorry. I should identify which plan, but,
5 yes, the plan of adjustment uses 6.75 percent; right?

6 A That is correct.

7 Q Okay. And that 6.75 did not result -- was not anything
8 that resulted from Milliman's work, was it?

9 A It was not.

10 Q And it didn't reflect any asset allocation of which you
11 were aware; correct?

12 A That is correct.

13 Q And you've not been provided with any asset allocation
14 that produces a 6.75-percent investment return; right?

15 A The 6.75 percent was -- we call it a prescribed
16 assumption.

17 Q And you've not been asked to revisit your analysis;
18 correct?

19 A I have not been asked to revisit that November 2013
20 analysis.

21 Q And you have not revisited that analysis, have you?

22 A I have not.

23 Q Now, I'm right that you don't know the asset allocation
24 that pertains to the 6.75 percent; right?

25 A The 6.75 was not based on a particular asset allocation.

1 Q Okay.

2 A It was --

3 Q I'm right that one of the things an actuary does is look
4 at an asset allocation and come up with an investment rate;
5 right?

6 A That's the usual practice.

7 Q And here what's going on is you've been given 6.75, and
8 now someone is trying to come up with an investment rate.
9 Isn't that what's going on here?

10 A That was the nature of this assignment, yes.

11 Q Okay. Now, I think you testified that you've been the --
12 you've served as an actuary for dozens of plans; right?

13 A Yes.

14 Q Okay. And am I right that industry surveys could be a
15 useful data point when determining a projected rate of return
16 for a pension system investment?

17 A I don't hold that view.

18 Q Can you turn to your deposition, page 83, line 7? 83,
19 line 7. "Fair enough."

20 "Question: Fair enough. In your view then,
21 could industry surveys be a useful data point when
22 determining projected rate of return for a pension
23 system's investment?

24 Answer: If you're using the phrase 'industry
25 surveys' in terms of surveys of prospective returns,

1 yes."

2 Do you see -- did you give -- were you asked that
3 question, and did you give that answer?

4 A That response is different than the question that I
5 understood that you just asked.

6 Q My only question is did the court reporter transcribe the
7 question correctly?

8 MR. STEWART: Objection, your Honor. I think he
9 said this is not proper impeachment because the questions do
10 not match. Makes no difference what the court reporter did.

11 THE COURT: Okay.

12 MR. STEWART: The question is Mr. Wagner's question
13 that he claims is inconsistent. That, I believe, is the
14 issue here.

15 THE COURT: Okay. Well, it's not for the witness to
16 claim improper impeachment. That's for you to claim. The
17 only issue -- or question before him was whether he gave that
18 question -- whether he heard that question and gave that
19 answer. Is that right?

20 THE WITNESS: I have no reason to believe that this
21 is improperly typed if that is your question.

22 THE COURT: All right. To the extent the city is
23 objecting on the grounds of improper impeachment, the Court
24 will overrule the objection.

25 BY MR. WAGNER:

1 Q Now, sir, can you turn to Exhibit 1036 in the book? This
2 is the public fund survey; right?

3 A It's labeled "Public Fund Survey."

4 Q And this is put out by NASRA?

5 A I'm not sure if this is the NASRA survey or --

6 THE COURT: Have you seen this before, sir?

7 THE WITNESS: I believe I saw this in deposition.

8 MR. WAGNER: Your Honor, there's been no objection
9 to this exhibit. I move it into evidence. There's been no
10 objection by the city.

11 MR. STEWART: That's fine.

12 THE COURT: Is it in evidence?

13 MR. STEWART: No objection, your Honor.

14 MR. WAGNER: Okay.

15 BY MR. WAGNER:

16 Q Sir, you've heard of the term NASRA; correct?

17 A Yes, I have.

18 Q And what is NASRA?

19 A National Association of State Retirement Administrators.

20 Q And are you aware that Ms. Kopacz cited NASRA report in
21 her report?

22 A I reviewed her report briefly. I can't say whether she
23 did or not.

24 Q Are you aware that Ms. Nichol cited it?

25 A Same answer.

1 Q Okay. If you look at the first page, have you -- you've
2 seen the public fund survey before; right?

3 A As I mentioned, I believe I saw this document in
4 deposition.

5 Q Okay. And do you see at the top it says "Median" --
6 first of all, look at the top left, the date of 6-25, 2014.

7 A I see that.

8 Q Okay. And do you see it says "Median for the 126 plans
9 shown here, investment return 7.9 percent." Do you see that?

10 A I see that.

11 Q And you see it has an inflation assumption of three
12 percent. Do you see that?

13 A Yes, I do.

14 Q Okay.

15 MR. WAGNER: And, your Honor, we have another
16 version of this exhibit, again, not objected to by the city,
17 1040. I move both of them into evidence.

18 MR. STEWART: No objection, your Honor.

19 BY MR. WAGNER:

20 Q Now --

21 THE COURT: All right. It's admitted.

22 (COPs Exhibits 1036 and 1040 received at 11:38 a.m.)

23 BY MR. WAGNER:

24 Q Can you turn to Exhibit 10164 in the book? Now, NASRA is
25 a well-known organization in the field, is it not?

1 A In the state pension plan field, yes.

2 MR. WAGNER: Your Honor, I move this document --

3 BY MR. WAGNER:

4 Q And generally the information from NASRA is considered
5 reliable?

6 A I have no reason to doubt its reliableness.

7 MR. WAGNER: Your Honor, I move this exhibit into
8 evidence.

9 MR. STEWART: Let me check our objections.

10 MR. WAGNER: I believe it's admissible whether they
11 object or not. It's admissible under 803 --

12 THE COURT: Well, I have to give them a chance --

13 MR. WAGNER: Sorry.

14 THE COURT: -- regardless.

15 MR. WAGNER: Sorry. Just trying to speed it up.

16 MR. STEWART: Whose exhibit is it? Whose exhibit?
17 Whose exhibit is this? I mean --

18 THE COURT: What's the number again, sir?

19 MR. WAGNER: It's 101 -- 10164 happens to have
20 been -- again, it was cited in --

21 THE COURT: I just asked the number.

22 MR. WAGNER: Okay.

23 THE COURT: Hang on.

24 MR. WAGNER: Sorry.

25 MR. STEWART: We can't -- your Honor, are you sure

1 that's the right exhibit number?

2 MR. WAGNER: That's what I'm told, yeah.

3 THE COURT: It is -- it's not in evidence by our
4 final pretrial order.

5 MR. WAGNER: Right. I think that's right.

6 THE COURT: It's a Retiree Committee exhibit.

7 MR. WAGNER: I would ask that it be admitted, and I
8 think I've established the foundation under 803(17). It's
9 also been -- it's been cited by Ms. Kopacz in her report, and
10 it's been cited by Ms. Nichol in her report.

11 THE COURT: Have you seen this before?

12 THE WITNESS: Yes, I have seen this.

13 THE COURT: Is it anything that you relied on when
14 you were preparing your work for the city?

15 THE WITNESS: No, it is not.

16 MR. STEWART: And, your Honor, I object for any
17 number of reasons, but I would also point out we did not
18 offer Mr. Bowen as an expert. The questions are getting into
19 expert testimony. We will consider the door now open, and if
20 what Mr. Wagner is doing is to -- going into this having
21 conceded this is an expert witness, we will withdraw our
22 objection, but the redirect will be using him as an expert.

23 MR. WAGNER: Your Honor, I don't think I've opened
24 the door. I asked him a question, whether industry
25 surveys --

1 THE COURT: Well, let's deal with whether the door
2 is open when and if you actually decide to do that.

3 MR. WAGNER: Okay.

4 THE COURT: Right now we're just going to deal with
5 the admissibility of this document. My question for you is
6 if the witness didn't rely upon it for any purpose here, how
7 is it admissible?

8 MR. WAGNER: Because the issue isn't whether he
9 relied on it. The issue is whether I can use it to cross-
10 examine him with respect to the 6.75 rate and the 7.2 rate.
11 That's what this is about. These are rates used by public
12 pension funds that are much higher than what's being used
13 here, and Mr. Bowen has already testified -- though he tried
14 to walk away from it, he's already testified that surveys of
15 this type are useful data. And I'd also note that Ms. Kopacz
16 relies on it, and Ms. Nichol relies on it.

17 MR. STEWART: Then perhaps when those witnesses take
18 the stand, it could be used. This is the sort of cross-
19 examination one uses with an expert witness. The witness did
20 not see -- did not rely upon this. I don't see it is
21 admissible in his examination. And I object as well to the
22 use of evidentiary --

23 THE COURT: Mr. Stewart, I'm sorry. I need to cut
24 you off and ask you to speak right into the microphone,
25 please.

1 MR. STEWART: I'm sorry, your Honor.

2 THE COURT: And you can have a seat while you do
3 that.

4 MR. STEWART: Okay. I apologize. Sorry. I don't
5 see the relevance that Ms. Kopacz and Ms. Nichol relied on
6 it. That means nothing. This witness, unless he is deemed
7 an expert, should not be examined on matters he did not rely
8 on. This would be for an expert something he could be asked,
9 but I thought Mr. Wagner said he's not treating the witness
10 as an expert.

11 MR. WAGNER: I'm just posing him questions on
12 something that he believed is -- he said himself is relevant.

13 THE COURT: The objection is sustained.

14 BY MR. WAGNER:

15 Q Now, sir, in your November 2013 letters, you used a rate
16 of inflation of two and a half percent; correct?

17 A That is correct.

18 Q And using a two and a half-percent rate of inflation, you
19 came up with a 7.2 percent return; correct?

20 A Yes.

21 Q And if the rate of inflation were three percent, the rate
22 of return would have been closer to 7.7 percent; correct?

23 A Yes.

24 Q And I'm right that there are lots of Milliman plans that
25 use rates of inflation higher than two and a half percent;

1 isn't that true?

2 A There are.

3 Q I'm right L.A. County uses an inflation rate of 3.45
4 percent?

5 A I imagine you have it in a survey somewhere. I don't
6 know that off the top of my head.

7 MR. WAGNER: Your Honor, may I show him Exhibit
8 103 -- 1040, which has been admitted into evidence and the
9 city hasn't objected to?

10 BY MR. WAGNER:

11 Q Can you turn to Exhibit 1040? Actually, why don't we use
12 1036? I think it's a little bit easier. Sir, L.A. County,
13 that's -- you look -- it's supposed to be alphabetical, but I
14 guess it's alphabetical by state, so L.A. comes under --
15 comes after Arizona on the first page. Do you see that?
16 L.A. County, you see that?

17 A Yes, I do.

18 Q That's a Milliman -- Milliman is the actuary for that
19 plan; right?

20 A Yes, we are.

21 Q And there the rate of return is 7.7 percent; right?

22 A Correct.

23 Q Inflation rate is 3.45 percent; right?

24 A Both as of June 30, 2011; correct.

25 Q Okay. California Teachers, is that another Milliman --

1 is that another plan for which Milliman is the actuary?

2 A Yes.

3 Q Okay. And there the rate of inflation used is 3.5 --
4 is -- I'm sorry -- three percent?

5 A Correct.

6 Q And the rate of return is seven and a half percent?

7 A Yes.

8 Q By the way, do you happen to know the funded status of
9 that plan?

10 A Of California Teachers?

11 Q California.

12 A I do not.

13 Q Would it surprise you if it was about 67 percent?

14 MR. STEWART: Objection, your Honor.

15 THE COURT: What is the objection?

16 MR. STEWART: "Would it surprise you if."

17 THE COURT: Yeah. His surprise is of no relevance.

18 The objection is sustained.

19 MR. STEWART: Okay.

20 BY MR. WAGNER:

21 Q Can you turn to Florida RS? Is that another Milliman
22 plan?

23 A Yes, it is.

24 Q And there the rate of inflation used is three percent?

25 A As of 7-1, 2012, yes.

1 Q Idaho, is that another Milliman plan?

2 A Yes.

3 Q Rate of inflation there uses 3.25 percent?

4 A As of 7-1-12, yes.

5 Q Okay. New Jersey Teachers, that's a Milliman plan, is it
6 not?

7 A Yes, it is.

8 Q And the other -- the inflation rate used is 2.75 percent,
9 is it not?

10 A As of 2011, yes.

11 Q Okay. By the way, that's a pension plan that's serviced
12 from your office, is it not?

13 A Yes, it is.

14 Q And by my math, five plans out of the 126 listed here use
15 an inflation rate of about two and a half percent. Is
16 that -- is your math the same as mine?

17 A I have not looked through the survey exhaustively, so I
18 don't know the answer to that.

19 Q Well, can you turn to Exhibit 1040, which arranges the
20 plans based on the rate of inflation? Can you count how many
21 use an inflation rate of two and a half or less?

22 MR. MONTGOMERY: If I may --

23 THE COURT: No, you may not. If you want to, you
24 can step forward and approach a microphone.

25 MR. MONTGOMERY: Your Honor, this is not an

1 unobjeted to exhibit, and I just wanted to make the record
2 clear that the Retiree Committee had objected to the
3 admission of 1040.

4 THE COURT: Oh, well --

5 MR. WAGNER: Well, it's a little bit late for that.
6 I mentioned that the city didn't object to it, and I never
7 heard anything from the back.

8 THE COURT: Was it admitted?

9 MR. WAGNER: I think you admitted it.

10 MR. STEWART: Yes, your Honor. You admitted it.

11 THE COURT: 1040 was admitted. All right.

12 MR. WAGNER: Okay.

13 BY MR. WAGNER:

14 Q Do you see that there are five plans out of the 126
15 listed here that use a rate of inflation of two and a half or
16 less?

17 A On Exhibit 1040, I see seven back in the time frame 2010
18 to 2012.

19 Q Okay. So seven out of 126; right?

20 A If there's 126 here, then yes.

21 Q Okay. That's about -- well, you're the actuary, but
22 that's about six percent or so; right?

23 A You're in the ballpark, I'm sure.

24 THE COURT: I think we've got enough percentages to
25 deal --

1 MR. WAGNER: Okay.

2 THE COURT: -- with without having to worry about
3 that one.

4 MR. WAGNER: That's fine.

5 BY MR. WAGNER:

6 Q Let me move to another subject, sir, ASF. Now, you were
7 asked some questions on direct about ASF. Do you recall
8 that?

9 A Yes.

10 Q And I'm right that in calculating from an actuarial point
11 of view the amount of actuarial liability for a pension fund,
12 you would include the amounts that are due under the relevant
13 plan?

14 A Yes.

15 Q And you would not include benefits that are not included
16 under the plan?

17 A Correct.

18 Q Now, Milliman has done some work on ASF; right?

19 A We have.

20 Q And we saw before that the unfunded liability calculated
21 by Milliman for GRS was about 1.879 billion; correct?

22 A I believe that's the figure.

23 Q Okay. And that figure includes an amount of ASF; right?

24 A The system has liability for both the pensions and the
25 ASF.

1 Q And you understand that there's an issue with respect to
2 ASF; correct?

3 A I do.

4 Q You understand that there were benefits presented to you
5 that were labeled as excess credits, right --

6 A We were provided --

7 Q -- excess interest credits; right?

8 A We were provided with that information.

9 Q And you understand the city is looking to recoup a
10 portion of those benefits; correct?

11 A Yes.

12 MR. WAGNER: Nothing further, your Honor.

13 THE COURT: Thank you. Any other cross-examination
14 of the witness? Redirect.

15 MR. STEWART: Just very briefly.

16 REDIRECT EXAMINATION

17 BY MR. STEWART:

18 Q First of all, here's your glass of water. You were just
19 shown Exhibit -- gosh, looks like 1036 -- and various
20 inflation numbers. Do you remember those questions a few
21 moments ago?

22 A Yes.

23 Q And you, in your answer, mentioned the dates of some of
24 those entries went back to 2011 or times a couple of years
25 ago. What change has there been in recent years in terms of

1 assumptions actuaries use about inflation?

2 A Well, I can speak specifically for Milliman. Our return
3 was 2.75 percent in our capital market assumptions model
4 prior to being reduced to 2.5. I don't recall the exact date
5 that our committee made that determination, but to address
6 your specific question more broadly, there has been a
7 decrease. The trend -- the general trend in recent years has
8 been a decrease.

9 Q Why?

10 A Again, I can't speak for the entirety of the industry,
11 but market interest rates have been low. Inflation has been
12 low. And to the extent that those recent experiences get
13 factored into forward-looking expectations, they're -- the
14 market is putting a lower price on inflation now than they
15 were several years ago is the best way to sum it up.

16 Q Let me ask you just briefly about this investment return
17 assumption that you were questioned about. The investment
18 return assumption represents what exactly?

19 A In these surveys that we've been looking at, these are
20 the --

21 Q No. Just in terms of the --

22 A Okay.

23 Q -- city's plans, not the surveys.

24 A In terms of the city's plans, the investment return
25 assumption is used to discount the expected future cash flows

1 to be paid from the plan to determine a present value.

2 Q And in terms of the city's agreement with the plans, the
3 investment return assumption also represents a certain
4 commitment by the city, does it not?

5 A I'm not sure I fully understand that.

6 Q Well, let me ask it better in that case. These are
7 defined benefit plans?

8 A Correct.

9 Q If the rate of -- if the investment return falls below
10 what the investment return assumption is, what is the
11 exposure of the city?

12 A Thinking back to the analysis we did earlier where we
13 were asked to determine specific targets, if the interim
14 period between now and the target date -- if experience is
15 not -- if experience is less positive than expected, the city
16 will have a larger exposure 2023 forward.

17 Q Fair to say that the investment return assumption from
18 the city's point of view represents the city's agreement on
19 the level of risk it is prepared to take on this obligation?

20 MR. PEREZ: Objection, your Honor. Leading.

21 MR. WAGNER: Objection. Yeah, leading --

22 MR. STEWART: I'll reask it.

23 MR. WAGNER: -- and argumentative.

24 THE COURT: The objection is sustained twice.

25 MR. STEWART: And it was only one question.

1 BY MR. STEWART:

2 Q From the city's point of view, what does the investment
3 return assumption reflect in terms of the city's risk?

4 A The way it was communicated to me originally was the
5 city --

6 MR. BRILLIANT: Objection, your Honor. Hearsay.

7 MR. WAGNER: Yes, yeah. It's hearsay.

8 MR. STEWART: Oh, I think by now that door, your
9 Honor, is off the hinges much less wide open.

10 MR. WAGNER: No, your --

11 THE COURT: The objection is sustained.

12 BY MR. STEWART:

13 Q Okay. From the standpoint -- put to one side what the
14 city communicated to you, simply as somebody who works with
15 these numbers. From the standpoint of the sponsor of the
16 system, what does the investment return assumption reflect in
17 terms of the sponsor's risk?

18 MR. WAGNER: Objection. Foundation.

19 THE COURT: Overruled. Go ahead, sir.

20 THE WITNESS: Let me try to phrase it this way. The
21 investment return is the hurdle rate that you have to hit in
22 practice year over year. To the extent you do better, the
23 plan sponsor is the recipient of that positive experience.
24 To the extent you do worse, the plan sponsor has to continue
25 to fund the plan and actually increase the contributions to

1 the plan to make up for that shortfall.

2 BY MR. STEWART:

3 Q And in this calculation, what is the lower rate of risk,
4 a lower investment return assumption or a higher investment
5 return assumption?

6 A Yes. A lower investment return assumption gives you a
7 lower hurdle to hit in investing your assets.

8 Q And a lower risk in terms of future contributions from
9 the city?

10 A Lower risk of volatility in contributions, yes.

11 MR. STEWART: Thank you. That's all I have, your
12 Honor.

13 MR. WAGNER: Your Honor, just a short --

14 THE COURT: Yeah. Go ahead.

15 MR. WAGNER: -- recross.

16 RECROSS-EXAMINATION

17 BY MR. WAGNER:

18 Q Do you understand that under the plan if the rate of --
19 if the returns exceed 6.75 percent, that money goes to the
20 retirees? Are you aware of that?

21 A I understand there's a provision for that.

22 Q And you understand that an investment return assumption
23 that is too low will overstate liabilities?

24 A Oh, I thought you said lower state. You said overstate?

25 Q Yes, overstate.

1 A Okay.

2 Q You want me to read it again? You want me to pose it to
3 you again?

4 A If you would, please.

5 Q Am I right that an investment return assumption that is
6 too low will overstate liabilities and costs?

7 A If you have a definition of "too low" and are asking that
8 in a general sense, I could agree to that's the way the math
9 works.

10 Q And in preparing the November 4 letters, am I right that
11 you didn't do an analysis of the historical rate of return
12 for GRS and PFRS, did you?

13 A We did not.

14 Q And you didn't take into account that in most years GRS
15 and PFRS actually exceeded their rate of -- their expected
16 rate of returns, did you?

17 A That was not taken into account in our specific November
18 analysis.

19 MR. WAGNER: Thank you.

20 THE COURT: Nothing further, sir?

21 MR. STEWART: Nothing further.

22 THE COURT: All right. I have some questions for
23 you. Addressing the investment return assumption, is there
24 one correct assumption that should be applied like
25 everywhere, or is it fair to say that there is an acceptable

1 range of such interest rate assumptions?

2 THE WITNESS: Well, to specifically answer the first
3 part of the question, I would say there is definitely not one
4 assumption, and I would say to the second part of your
5 question we believe there is a range of reasonable
6 assumptions, but that is not an absolute range. It's a range
7 which varies by plan.

8 THE COURT: What are the factors that impact where
9 within a range -- one second -- where within a range a
10 pension plan would choose its investment return assumption?

11 THE WITNESS: Certainly. In Actuarial Standard of
12 Practice 27, which deals with selection of investment
13 returns, the concept is that when the actuary gets done or
14 the investment consultant gets done with doing their
15 mechanics, which I can describe further if you would like, we
16 should recommend a range in which the expected rate of return
17 is more likely than not to fall, so the results of our
18 capital market assumptions model where we can take a specific
19 systems asset allocation and use it as an input to develop a
20 range of outputs will develop percentiles, and so we'll look
21 from the 25th percentile where three out of four times we
22 think we'll hit that hurdle and we'll go up to the 75th
23 percentile, which one out of four times we'll hit that. In
24 between those two end points is a 50-percent range centered
25 around the median expected return, and from the perspective

1 of the standard, when we recommend it in just that fashion,
2 we recommend to the sponsor that is our expected range based
3 upon your particular asset allocation. Where the plan
4 sponsor decides to fall within that range would be dependent
5 upon their tolerance for risk.

6 THE COURT: And that issue, the issue of the
7 sponsor's tolerance for risk, is that something that the
8 actuary makes a recommendation or even gets involved in
9 helping the client to assess?

10 THE WITNESS: That's not something that the actuary
11 recommends, and from the perspective of assessing, I would
12 not say it's typical for an actuary to assess a plan
13 sponsor's budgetary ability to handle volatility, but what --
14 I mean the way that I would approach this is if you think
15 back to the tank that we had on the earlier demonstrative,
16 lowering an investment return assumption would cause a higher
17 measure of liability currently, which would increase current
18 contributions, the "C" that was going into the tank, with a
19 lower hurdle of "I" in the future, so we could explain to
20 plan sponsors, as we did for the city -- we ran several
21 different investment return assumptions to illustrate how
22 sensitive the results were, and the lower -- to oversimplify,
23 but the lower "I" that you choose, the lower investment
24 return you assume you're going to have over time, the more
25 cash you may put in up front, but the much more likely you

1 are to hit your targets over time, and vice versa all of that
2 would be true as well.

3 THE COURT: So is it the role of an actuary for a
4 plan sponsor ever to say to the sponsor under the guidelines
5 that we, as actuaries, use, you should not use the investment
6 return assumption that you have chosen to use?

7 THE WITNESS: I would say it's close to that, not
8 exact. The plan sponsor -- the trustees for the system are
9 free to choose their rate of return. To the extent that we
10 feel it's outside our reasonable range, we have a
11 responsibility to disclose that.

12 THE COURT: Did you ever say to the city here that
13 the city and this pension plan should not choose 6.75
14 percent?

15 THE WITNESS: We did not.

16 THE COURT: In the beginning of your testimony, you
17 mentioned what your credentials were.

18 THE WITNESS: Yes.

19 THE COURT: Can you state for the Court what you had
20 to do or what you had to demonstrate to get those
21 credentials?

22 THE WITNESS: Sure. The first one I would have
23 mentioned is fellowship in the Society of Actuaries, and that
24 is the -- one of their significant roles is examinations and
25 continuing education, so a credentialing organization. The

1 examination process is several years in length. It took me
2 five or six years to get through the process. Having a
3 master's degree, I would characterize the fellowship process
4 as PhD level. It was significantly more intense.

5 The other examination credential I mentioned is
6 the -- I'm an enrolled actuary under ERISA, and that's what's
7 known as the joint board of the Department of Labor and
8 Treasury administers examinations for actuaries who want to
9 practice in private pensions and assist the plan sponsors in
10 filing their various governmental forms.

11 THE COURT: Um-hmm. You mentioned that you had, I
12 think you said, half a dozen publications.

13 THE WITNESS: Yes.

14 THE COURT: What was the name of what you consider
15 to be your most important publication, and where was it
16 published?

17 THE WITNESS: I'm not sure I could really say which
18 one was the most important from a personal perspective.
19 Well --

20 THE COURT: Well, then pick one.

21 THE WITNESS: From a personal perspective, I wrote
22 an article on GASB 45, which is an accounting standard that
23 came into place about ten years ago for governmental retiree
24 healthcare plans, and I practice significantly in that area
25 as well as pensions, so that one was very important to me

1 personally.

2 THE COURT: And where was that published, sir?

3 THE WITNESS: That was a Milliman publication for
4 our clients and general consumption.

5 THE COURT: Okay. All right. Anything further
6 questions for the witness?

7 MR. WAGNER: Nothing further.

8 THE COURT: No? All right. Sir, you may step down,
9 and you are excused.

10 THE WITNESS: Thank you.

11 (Witness excused at 12:04 p.m.)

12 THE COURT: We'll break for lunch now until 1:30.

13 Mr. Cullen.

14 MR. CULLEN: Over the smaller break we got a start
15 on our homework with respect to the Court's concern over the
16 objections and the schedule with respect to those objections,
17 and I think that I can say that we are in agreement that if,
18 first, they would agree to file their objections on Friday
19 and we would file our objections on the following Friday --

20 THE COURT: File your responses?

21 MR. CULLEN: File our responses -- sorry -- on the
22 following Friday. During that period in between those
23 Fridays we would do any factual depositions or discovery that
24 we agreed on during that period. They would file their
25 expert -- an expert report responsive to any changes affected

1 by the Syncora agreement at that next Friday.

2 MR. PEREZ: No.

3 MR. CULLEN: No?

4 MR. PEREZ: The following Monday. Next Friday is
5 Rosh Hashanah.

6 MR. CULLEN: Oh, the following Monday. And then
7 that expert -- the expert depositions with respect to that
8 would go on while the trial was going on. In order to get
9 that objection work done, what the objectors would like to
10 have happen is that they would like to do as much as we could
11 do through Thursday night this week, not have trial hearing
12 days next week, and start full bore on the next Monday, and
13 specifically with respect to doing as much as we could do,
14 that would absolve us of any break in the testimony, for
15 instance, of Mr. Malhotra or Mr. Orr while the objection
16 process was going on, so that seemed all sensible to us.

17 The thing that we remain somewhat at odds upon is
18 the issue of the additional expert to replace Mr. Murphy, the
19 expert on the subject of employee motivation. I had
20 interpreted the Court's rulings with respect to the first and
21 second aspect of the procedural concern to subsume the idea
22 of Mr. Murphy on the following reasoning, that on other
23 instances, for instance, on the art, when FGIC wanted their
24 own expert, they hired their own expert or provided for an
25 expert on that subject. That has not been done with respect

1 to Mr. Murphy, so we would retain -- we disagree with respect
2 to the need to schedule or to do things with respect to an
3 additional expert to replace Mr. Murphy, but, as we told
4 them, if the Court feels otherwise and there is an additional
5 expert, we will agree to a schedule for that.

6 THE COURT: I do. I think FGIC should have the
7 opportunity at this point to retain its own expert.

8 MR. PEREZ: And, your Honor, we've already talked
9 to -- Mr. Soto has already talked to him this -- I'll sit
10 down -- over the weekend, and the reason we picked the
11 Monday, 29th, date for an expert report is because I think
12 that's what they indicated they would need for an expert
13 report.

14 MR. CULLEN: If that is the Court's clarification,
15 then I think the city would agree to let them use Mr. Murphy,
16 and we will depose Mr. Murphy in the course of either next
17 week or the week thereafter.

18 MR. PEREZ: That's even better.

19 MR. CULLEN: Is that --

20 MR. SOTO: In other words, just if I'm understanding
21 that, we'll stay with Murphy. We just have him deposed.
22 That's fine, your Honor.

23 THE COURT: Okay. So let me ask the parties here to
24 memorialize --

25 MR. CULLEN: Yes.

1 THE COURT: -- this agreement into a stipulation. I
2 didn't quite understand from your presentation when we would
3 actually be resuming testimony in this scenario.

4 MR. CULLEN: End of the day Thursday we stop.
5 The -- a week -- the succeeding Monday we start, which I
6 believe is the 29th.

7 THE COURT: It is.

8 MR. PEREZ: And, your Honor, this is all on the
9 assumption that we actually get the plan tonight. I mean,
10 that -- if --

11 THE COURT: Yeah. I was going to -- I was going to
12 clarify that, too. Is there any issue about that as to --

13 MR. CULLEN: Not to the best of my knowledge, your
14 Honor, but I'm pledging others' labor on that, so -- there's
15 one other --

16 THE COURT: He wants to say something to you.

17 MR. CULLEN: Yes. There are a couple of things that
18 may happen as a result of this with respect to the order of
19 witnesses. In particular, we've talked about taking some of
20 the witnesses out of order with sufficient notice if we --

21 THE COURT: Right.

22 MR. CULLEN: -- allowing us to accommodate this
23 schedule. There's one other caveat for the Court. I
24 received a note from Mr. Chiara, who is listening over the
25 phone, who said that he wanted to be included in our meet and

1 confer on this. On the idea that it wasn't actually a meet
2 and confer and he wasn't on the motion and time runs, I
3 thought we would present this to the Court, but I don't mean
4 to prejudice Mr. Chiara.

5 MR. PEREZ: Your Honor --

6 MR. CULLEN: DeChiara. Sorry.

7 MR. PEREZ: -- he does raise a good point because I
8 forgot what date we were supposed to set aside for Mr.
9 DeChiara, and we don't want to disturb that. And it may have
10 been the 29th or the 30th. I'm not sure.

11 MR. CULLEN: I think it's the 30th.

12 THE COURT: Well, let me ask you to --

13 MR. CULLEN: Sorry.

14 MR. PEREZ: We can work --

15 THE COURT: -- dive into that over lunch, and we can
16 clarify it.

17 MR. CULLEN: Okay.

18 MR. WAGNER: More short term, at 1:30 are we
19 addressing anything left first with respect to Ms. Kopacz?

20 THE COURT: Yes.

21 MR. WAGNER: Is that still on for 1:30?

22 THE COURT: The Court intends to first examine
23 Ms. Kopacz itself regarding issues affecting her
24 qualifications and methodology, and we still have the Retiree
25 Committee's motion that's outstanding, and so I want to give

1 them an opportunity to question her as well. And we still
2 have to clarify what's happening with the Macomb County
3 objections as well, so, anyway, we've used up enough time
4 that we're going to push our start till 1:40.

5 MR. PEREZ: Thank you, your Honor.

6 MR. CULLEN: Thank you, your Honor.

7 MR. STEWART: Thank you, your Honor.

8 THE CLERK: All rise. Court is in recess.

9 (Recess at 12:11 p.m., until 1:40 p.m.)

10 THE CLERK: All rise. Court is back in session.
11 You may be seated. Recalling Case Number 13-53846, City of
12 Detroit, Michigan.

13 THE COURT: Looks like everyone is here. Please
14 stand by one moment, please. Okay. So on the matter of the
15 Macomb County objections, do we need to argue the issue that
16 the Court set for hearing today, or can we just say that
17 we're done with that?

18 MR. BRILLIANT: Your Honor, Allan Brilliant on
19 behalf of Macomb County by and through its public works
20 commissioner, Anthony Marrocco. We believe, your Honor, that
21 the issue is now, you know, moot and that there's no reason
22 to have argument on it.

23 THE COURT: What's the city's position on this?

24 MS. LENNOX: Good afternoon, your Honor. Heather
25 Lennox of Jones Day on behalf of the city. We believe, in

1 light of the withdrawal of the objection, even though it was
2 not withdrawn with prejudice, as long as it remains
3 withdrawn, we can avoid arguing the matter before your Honor
4 today. Should it be refiled, however, we would have to take
5 it up.

6 THE COURT: Okay. All right. The Court will
7 consider that matter resolved then and won't conduct any
8 further argument on it.

9 MR. BRILLIANT: Thank you, your Honor.

10 THE COURT: Okay. Let's turn our attention to the
11 matter relating to the Daubert motions for Ms. Kopacz. I may
12 have misspoken before the lunch break and suggested that the
13 Retiree Committee had filed a motion. It was not the Retiree
14 Committee. It was the Retirement Systems. My apologies for
15 that mixup. Ms. Kopacz, are you here? Step forward, please.
16 Slide all the way through, if you can, and we'll get you on
17 the witness stand. Please raise your right hand before you
18 sit down.

19 MARTHA E.M. KOPACZ, COURT'S WITNESS, SWORN

20 THE COURT: All right. Please sit down. All right.
21 Is there any objection if the Court proceeds with its
22 examination and then opens it up to others for their
23 examinations of the witness?

24 MR. STEWART: No objection.

25 MS. GREEN: No objection other than we are not going

1 to argue the motion first. We're going to do that after the
2 testimony or in the middle or --

3 THE COURT: Well, I -- well, we're going to have --
4 we would have argument after the testimony in any event, so I
5 would just prefer to defer until then.

6 MS. GREEN: Okay.

7 THE COURT: Okay.

8 DIRECT EXAMINATION

9 BY THE COURT:

10 Q What is your name?

11 A Martha Ellen Middleton Kopacz.

12 Q And what city do you live in?

13 A I live in Norwell, Massachusetts.

14 Q And where are you currently employed?

15 A I am employed with Phoenix Management Services in Boston.

16 Q And what kinds of work is Phoenix typically retained to
17 perform?

18 A Phoenix Management Services and its affiliated companies
19 are advisors to operationally and financially troubled
20 organizations. We also do investment banking and transaction
21 advisory work.

22 Q And what is your title at Phoenix?

23 A Senior managing director.

24 Q And what are your responsibilities in that position?

25 A I am a member of the senior partnership group of the

1 firm, and I service clients and promote our services to
2 nonclients. I write and speak and supervise staff.

3 Q What is your understanding of your assignment in this
4 case?

5 A My understanding of my assignment is to serve as your
6 independent expert and to fulfill the order you signed
7 appointing me to render an opinion on the feasibility of the
8 plan of adjustment for the City of Detroit and to render an
9 opinion on the reasonableness of the assumptions that
10 underlie the revenues, expenses, and the plan payments.

11 Q And did you fulfill that assignment?

12 A I did.

13 Q Before we get into the issues here --

14 A Um-hmm.

15 Q -- I want to make a complete record of our
16 communications.

17 A Okay.

18 Q First, did I ever state or suggest or imply what I
19 thought your opinions should be on the issues that I
20 presented or assigned to you?

21 A No, never.

22 Q Did I ever state, suggest, or imply the principles or
23 methods that you should use in this assignment?

24 A Not at all.

25 Q In fact, have we ever discussed your conclusions and

1 opinions in this case?

2 A No, never.

3 Q Have we ever discussed the substance of your work in any
4 way?

5 A Not at all.

6 Q Did we have a conversation about what your testimony will
7 be at this hearing?

8 A We had a conversation about this hearing, not what my
9 testimony would be.

10 Q What did we discuss?

11 A We discussed the logistics for today and that you would
12 be asking me questions, and that was really it. Oh, and
13 whether or not my attorneys could be here.

14 Q Did I e-mail to you the questions that I'm going to ask
15 you today?

16 A You e-mailed me a list, yes.

17 Q What is your understanding of why I did that?

18 A I'm not really sure other than to maybe help me focus my
19 preparation.

20 Q And did I request that you provide me comments or
21 feedback or suggestions regarding my questions?

22 A You said I could if I wanted to.

23 Q Did you do that?

24 A I did not.

25 Q Did we have any discussion about what your answers to

1 these questions would be or should be?

2 A No.

3 Q Did you keep a contemporaneous log of all of your
4 communications with me and my office?

5 A I did.

6 Q What is your understanding of why we are here today and
7 what this hearing is about?

8 A We're here today because the Retirement Systems have an
9 objection, and I don't mean that in a legal sense, but there
10 are a couple paragraphs in my report that they really don't
11 like.

12 Q Okay. You understand that other parties, FGIC and
13 Syncora, had also filed motions challenging your
14 qualifications or methods --

15 A Yes.

16 Q -- and that those have since been withdrawn?

17 A They have been, yes.

18 Q Okay. Only because those questions were raised, I intend
19 to address those issues here today even though no one is
20 pursuing those issues.

21 A Okay. That's fine.

22 Q Do you understand that today is not the day for you to
23 testify about your opinions and the grounds for them? It is
24 just to determine whether your opinions are admissible under
25 the criteria for the admission of expert testimony in Rule

1 702 of the Federal Rules of Evidence?

2 A I understand the first part of that. This is not my --
3 this is not my testimony as to my opinion. In terms of what
4 I did or didn't do, I know that there were objections raised
5 to not doing enough or doing too much or something like that.

6 Q Okay. So let me review Rule 702 with you. It says, "A
7 witness who is qualified as an expert by knowledge, skill,
8 experience, training, or education may testify in the form of
9 an opinion if: (a) the expert's scientific, technical, or
10 specialized knowledge will help the trier of fact to
11 understand the evidence or to determine an issue; (b) the
12 testimony is based on sufficient facts or data; the testimony
13 is the product of reliable principles and methods; and the
14 expert has reliably applied the principles and methods to the
15 facts of the case." So I want to review each of these
16 criteria with you carefully and then the specific issues
17 raised in the motions that challenge your qualifications or
18 methods --

19 A Um-hmm.

20 Q -- so that I can determine whether your opinions are
21 admissible. So let's begin with your knowledge, skill,
22 experience, training, or education. What is your education?

23 A I have a bachelor's of science in business from the
24 Kelley School of Business at Indiana University with a
25 concentration in marketing, and I have a master's of business

1 administration also from the Kelley School with a
2 concentration in finance and investments.

3 Q Um-hmm. And what continuing professional education have
4 you participated in since then?

5 A Since then most of my career I have been a consultant in
6 a public accounting firm, and I've also been certified
7 professionally since shortly after I got out of graduate
8 school, so I have had a 120-hour requirement every three
9 years, so on average 40 hours a year, so I've probably done
10 somewhere between 1,200 and 1,500 hours of continuing ed in
11 my career.

12 Q And what is your employment history?

13 A After graduate school, I joined a firm called Peterson &
14 Company in Chicago. It was a spinoff from Arthur Andersen.
15 I was there for nine years in Chicago, New York, and Boston.
16 I left Peterson in 1990 and joined Price Waterhouse, and I
17 was at Price Waterhouse through the merger with Coopers,
18 through the sale to FTI Consulting, and I left FTI in 2003.
19 I joined Alvarez & Marsal. I was recruited by them to start
20 their public sector not for profit practice, and I was there
21 until March of '06 when I was recruited by Grant Thornton to
22 start their United States corporate restructuring practice,
23 and I stayed at Grant through just about the end of 2011. I
24 intended to take a sabbatical, but I ended up with some
25 clients hiring me individually when I left, so I formed Brant

1 Point Advisors and continued to serve clients on a much
2 smaller scale and on a part-time basis until I joined Phoenix
3 about a year ago.

4 Q Do you have any licenses or certifications?

5 A I do. I'm a certified management accountant, and I'm a
6 certified insolvency and restructuring advisor.

7 Q And how did you achieve those certifications?

8 A Certified management accountant is very similar to a CPA
9 except most of the people that hold it are inside corporate
10 accounting and finance as opposed to public accounting. I
11 sat for the exam shortly after I finished graduate school,
12 and then I think there were some experience requirements, and
13 then I was licensed after that.

14 Q And who grants that certification?

15 A It is the association of certified management
16 accountants. It's like -- again, it's a trade -- I would say
17 it's a trade organization like the AICPA or something like
18 that, and so that's -- I immediately got into continuing
19 education requirements as a result of that. And then the
20 CIRA, I don't recall exactly when that certification was
21 promulgated, but it was a group of industry professionals
22 sometime back in -- I'm guessing the late '80s, the early
23 '90s, who wanted to add some rigor to our restructuring
24 advisory practice, and I was part of that group with Grant
25 Newton that was part of the first group certified in that.

1 Q Do you have any publications?

2 A I don't have any publications, but I've written some
3 articles, so most recently for the ABI Journal a couple
4 months ago.

5 Q What was that on?

6 A That was -- and they changed the title, but it was along
7 the lines of the missing link in successful restructurings,
8 and it was really a piece about how important the management
9 skill set and the talent is. It's not just the liabilities
10 and the assets and how the numbers all work together, but
11 it's really about the people that are going to be in charge
12 once all of the professionals leave.

13 Q Do you have any professional affiliations or memberships?

14 A I do. I'm a fellow of the American College of Bankruptcy
15 in the twelfth class, so a long time ago. I am a charter
16 member of the Turnaround Management Association. I'm a
17 charter member of the -- of IWIRC, which is the International
18 Women's Insolvency and Restructuring Confederation. I
19 started that chapter in Boston many years ago. I'm a member
20 of the ABI, 25-plus years with that. INSOL, and then the
21 rest of it is all more civic and whatever, but those are the
22 main professional associations.

23 Q Have you held any positions of leadership within those
24 organizations other than what you've already described?

25 A Yeah, I have, and the only one right now is I'm on the

1 admissions committee for Circuit American College.

2 Q Other than the American College of Bankruptcy, any other
3 professional honors or recognitions?

4 A I've received some service awards from the Legal Aid
5 Society in New York and from Judge Kaye in the State of New
6 York. I received some recognition from the National Women's
7 Conference, but, yeah.

8 Q Okay. Focusing now on your work in private sector
9 business cases --

10 A Okay.

11 Q -- please describe for us your experience in serving as
12 an expert either in bankruptcy cases or in out-of-court
13 business workout situations and identify some of the relevant
14 and significant cases and your assignments in them.

15 A Okay. The very first expert testimony I gave was back in
16 the mid-'80s in Louisville, Kentucky, in front of Judge
17 Roberts in a case called Belknap. It was a hardware chain
18 distributor and retailer, and that was testimony around
19 insolvency preferences, fraudulent conveyances. And there
20 were a lot of cases filed -- individual adversary
21 proceedings, so I probably testified before Judge Roberts I
22 would say 15 times, something like that, really early in my
23 career. And then sometime again I'm thinking more into the
24 '90s I was retained in a matter called Healthco. Originally,
25 the bankruptcy was in front of Judge Queenan, but the case

1 was tried in District Court in Massachusetts. It was about a
2 fraudulent conveyance, whether a leveraged buyout would be a
3 fraudulent conveyance. And I testified about the projections
4 and the assumptions that the company, its investment bankers,
5 and its accountants had made at that time. Also about the
6 same time I testified in Tennessee in a case called Tennessee
7 Hotel Associates, and I don't -- it was in Chattanooga, but I
8 know the judge has retired since then, and I don't recall his
9 name. That was a valuation case and some discussion around
10 reasonable value of use and occupancy and the like. And then
11 the last expert testimony prior to this occurred in late '95
12 or early '96 in front of Judge Cristol in Tampa in a case
13 called Lykes Brothers Steamship, and it was about the
14 condition of the debtor and its prospects for reorganization.
15 So those are the only cases that I've actually testified in
16 as an expert as opposed to a fact witness in Bankruptcy
17 Court, and while I have been retained to be an expert in some
18 other matters, I've never testified in court.

19 Q Um-hmm. In approximately how many of these kinds of
20 matters have you worked where you didn't actually testify,
21 where you were just a consultant or another kind of witness?

22 A I have -- I've participated in over a hundred
23 restructurings in my career, and I've really stopped counting
24 even though I keep a list of them to this day, and the --
25 and, again, my very first consulting engagement was the

1 bankruptcy of a public accounting firm in Chicago in April of
2 1982. And I just got involved in the business at that point
3 and have continued to this day, so I've done -- I would say
4 probably half have been in court and about half have been
5 out, and about half of them are debtor company organization
6 side, and about half are another -- you know, a creditor
7 constituency, a bank, a bondholder.

8 Q Approximately how many of them involved evaluation on
9 your part of the debtor's plan?

10 A I counted them last night, and there are 29 that are --
11 in which I evaluated the company's plan in a formal context
12 either in court or out of court but in a formal restructuring
13 context and about 22 that I prepared.

14 Q Do you have experience -- or what experience do you have
15 in evaluating executive leadership in the context of
16 evaluating the feasibility of a business or a municipal
17 restructuring?

18 A In every case, whether I've been involved in preparing
19 the projections in the plan or evaluating the projections in
20 the plan, I evaluated management and their ability to carry
21 out that plan.

22 Q Um-hmm. And why did you do that in each and every case?

23 A Because I believe that the plans, no matter what the
24 numbers say, they're predicated on having people in place who
25 can deliver.

1 Q Okay. You did work for the Nassau County Interim Finance
2 Authority?

3 A I did.

4 Q What was that work?

5 A I was retained by the Interim Finance Authority. We
6 called it NIFA. It is a state control board that was put in
7 place now probably 12 or 13 years ago when Nassau County got
8 into financial difficulty. I was retained in -- I'm
9 thinking -- I'm thinking back -- maybe 2010, early '10 or '11
10 when it was clear that the deficit in Nassau County was at a
11 point where it was challenging the viability of the county,
12 and the control board had the power under the state statute
13 to take control and to freeze wages and to, in essence, take
14 the checkbook. That required a finding by the control board
15 that the county was insolvent or likely to become insolvent.
16 There was a significant difference of opinion between the
17 county executives and the NIFA staff and the NIFA board as to
18 whether or not the county was structurally in a deficit
19 position, and I was retained at that time to advise NIFA on
20 whether or not a control period could be instituted. So the
21 first part of that work was really to look at not only the
22 annual budget through -- which was June, and I think I got
23 involved in July after the budget had been issued, and they
24 do three-year budgets there, but to look at those three years
25 as well as to look at some of the prior budgets in terms of

1 how the county had accounted for certain revenues. And then
2 I provided a written statement to the control board with my
3 findings as to what I believed the deficit was and whether or
4 not the county had the ability to do anything to get out from
5 under that deficit. That was the first part of it.

6 And then the second part of NIFA was during that
7 control period, we undertook a really kind of top to bottom
8 operational and business review of the county to identify
9 opportunities to reduce costs, improve services, make things
10 more efficient, and we did that through the lens of looking
11 at it on a time frame, what could be done in 90 days, what
12 would take a year or more, what would take three to five
13 years, so that there was a time frame, and we also looked at
14 with all of those initiatives, which ones impacted collective
15 bargaining agreements, which ones could be executed without
16 collective bargaining negotiations, and we did the same thing
17 and looked at those relative to legislation charter issues
18 and whether or not you would need enabling legislation to do
19 some of these things, so --

20 Q Did that work involve any evaluation on your part of any
21 pension-related issues?

22 A Yes, although pension is not as big of an issue in New
23 York because the pensions are funded, in essence, by the
24 state, so if you don't make your pension contribution, the
25 state simply withholds aid so that they get paid, so they

1 were not in as unfunded position as many other states and
2 municipalities.

3 Q What was your work in that case as it related to pensions
4 then?

5 A We looked at the -- what we expected to be the future
6 funding requirements over the next few years relative to were
7 they going up, were they going down, and -- because the state
8 had given -- had made some accommodations over the last few
9 years, which reduced the amount of contributions that Nassau
10 County had to make and when did we have to make those catch-
11 up payments.

12 Q Did that work involve evaluating on your part the
13 accuracy of the county's revenue forecasts?

14 A Very much so, yes.

15 Q What was the county's annual budget, if you can recall?

16 A Just about \$3 billion. If it were a state, it would be
17 the tenth largest state in the country, tenth -- I mean
18 tenth -- there would be ten states in this country that are
19 smaller than Nassau County. Sorry. I said that backwards.

20 Q And have you done work for the Legal Aid Society in New
21 York City?

22 A I did.

23 Q What was that work?

24 A In 2004 and 2005 I served as the interim president and
25 the chief restructuring officer of the Legal Aid Society in

1 New York.

2 Q And what were your responsibilities in that role?

3 A In that role Legal Aid was about 150 years old at the
4 time, \$150 million budget of which about 130 million are
5 funded by the State of New York and the City of New York.
6 The society was operating at a deficit although didn't really
7 know how much because there had been some embezzlement and
8 some intentional falsifying of records by the former CFO, so
9 while I was serving in those capacities -- and there was an
10 attorney in chief who handled the legal work obviously
11 because I couldn't do that, but in terms of restructuring, we
12 did a complicated out-of-court restructuring in which we had
13 to renegotiate both of our union contracts. The first one
14 was with the SEIU, who had the collective bargaining
15 agreement with our paralegals, our social workers, our
16 clerical people, and then with the UAW, who was the
17 collective bargaining agreement with our lawyers, so we had
18 to do -- we had to renegotiate those. We did a top to bottom
19 strategic plan, did a lot of cost cutting, did some fund-
20 raising, renegotiated leases, consolidated real estate. We
21 froze the existing pension plans and renegotiated with the
22 unions new pension programs going forward moving from a
23 defined benefit into more of a defined contribution mode.
24 What else did I -- oh, my gosh. We ended up taking about \$65
25 million of liability off the balance sheet and getting the

1 society from losing arguably a million plus a month to better
2 than break even.

3 Q Are there any other nonprofit or municipal assignments
4 that you've had that you think may have assisted you in
5 preparing for the work in this case?

6 A Yeah. There's one other, and it was a private out-of-
7 court restructuring in which I represented seven transit
8 authorities, including MTA in New York, MBTA in Boston, CTA
9 in Chicago, Minneapolis, Dallas, San Francisco. I'm
10 forgetting somebody. I'm forgetting a couple. Anyhow, had
11 an opportunity to work with the finance and budgeting teams
12 from each of those transit authorities in terms of working
13 with their annual development of revenue, so --

14 Q How would you say that that work helped you in this case?

15 A It really helped me when I was looking at the DDOT
16 deficit in this case, right, because DDOT -- DDOT is unique
17 in that it's an enterprise fund operation, but because it
18 operates at a deficit, it has to be funded by the general
19 fund, and that's really helpful. It also -- I think
20 anytime -- in all of those cases, we're looking at the
21 projection of revenues. Similarly, with Legal Aid, we're
22 very involved with the city and the state in terms of how
23 they were budgeting for our work and how we were getting
24 authorizations through the council and the legislature, so --

25 Q Focusing again on your work for the Legal Aid Society in

1 New York, you mentioned that you did some work on their
2 pension issues and that when you went in, there was a defined
3 benefit pension plan; is that right?

4 A Yes.

5 Q What was your work specifically in evaluating that, that
6 situation?

7 A Yeah. The first thing that I realized was that
8 because -- the Legal Aid Society is a not for profit, but
9 because it's not a public entity, it is subject to ERISA
10 laws, so there were going to be cash funding requirements
11 that -- some of which hadn't been made as timely as they
12 should have been in the past, but it was going to be a
13 significant crunch for the society to make those, so I
14 reached out to the society's actuaries. And one of the
15 unique things about Legal Aid is I had 17 law firms on
16 retainer on a pro bono basis, and we had 1 firm who was
17 really, really good in pensions, so I asked them to get
18 involved and to look at our options for how to do -- to
19 figure out how we were going to be able to do this. We also
20 got involved -- I also got involved immediately with the
21 unions because there was a union plan. There was also a plan
22 for our nonunionized workforce which had to be modified as
23 well. And it took probably I would say three or four months
24 of work between the society's pension advisory group, their
25 investment group, the subcommittee of the board that looked

1 at that, the outside lawyers, and we looked at a lot of
2 options as to how to handle that, and then ultimately we had
3 to negotiate what was the freezing of the plan and putting
4 together a new plan, so --

5 Q So what was it about your expertise or the scope of your
6 expertise that you felt allows you to work on pensions?

7 A Well, I mean I have -- I do have an MBA in finance and
8 investments. Okay. So I had educational training in higher
9 order finance concepts. I've been in the restructuring world
10 for, at that point, probably, you know, 20-plus years, having
11 come across pension issues and OPEB issues in the private
12 sector from time to time, having clients who've had to turn
13 their pensions over to PBGC, et cetera. And, quite frankly,
14 pension is the kind of topic that I will never say that I
15 like it, but you can put your head in it, and you can
16 understand it when you have to. It's not -- there's some
17 nuances to it. There's some things that are very complicated
18 about it. But at the end of the day, it's about obligations.
19 It's about investments. It's about finance, and that can be
20 understood by most people as long as somebody is willing to
21 teach you about that.

22 Q I take it this is the first time you've served as a
23 court-appointed expert?

24 A Yes.

25 Q Is there something you need to retrieve?

1 A Yes. I just dropped my glasses. I don't know why I have
2 them, but I dropped them.

3 Q What would you say has been different about your service
4 as a court-appointed expert in this case compared to your
5 service as experts for parties in prior cases?

6 A That's the main -- that's the main difference is I don't
7 really have a client that has a point of view. Every other
8 engagement I've had, whether it involved expert testimony or
9 just advisory work, I've always had a client that had some
10 point of view about something, and so the independent nature
11 of this role has been really very liberating and at some
12 points in time a little unsettling.

13 Q Did other professionals in the Phoenix firm participate
14 with you in meeting your responsibilities as the Court's
15 expert?

16 A Yes.

17 Q Can you please identify them and the specific roles that
18 each played?

19 A Yes. Let me go through that. First and foremost is
20 Brian Gleason, who is my partner at Phoenix. Brian has 20-
21 plus years' experience in this business and has done
22 extensive work in the public sector in southeast
23 Pennsylvania, in Philadelphia, in Delaware, in New Jersey,
24 both on an interim management in public sector as well as
25 advisory assessing sorts of things. Brian -- I made Brian be

1 my client during this engagement, and I made him challenge
2 what we were doing as a team and helping me really think
3 through to make sure that we were following a good approach
4 and being mindful. Brian also helped manage the rest of the
5 Phoenix team because I spent a significant portion of my
6 time, particularly early on, in reaching out to parties of
7 interest in the constituencies here, people that I felt that
8 could help me get up to speed quickly. And so while I was
9 focused on external sources of information, Brian was working
10 with our team making sure that we were getting what we needed
11 from the city, so -- and Brian was probably, along with me,
12 the chief architect of the feasibility definition.

13 Q Who else?

14 A Okay. Next would have been Bob Childree. Bob worked
15 with us as a subcontractor, but Bob and I had done the NIFA
16 engagement together and Jefferson County at Grant Thornton.
17 He had been involved in that, although I hadn't been involved
18 in it. He was the former comptroller of the State of Alabama
19 for 20-some years, and, you know, he's a government
20 accounting guy. He's an expert in all of those accounting,
21 finance, financing, budgeting, pensions, operations, ERP
22 systems. Anything that you would put under the
23 responsibility of a CFO for a state, Bob did that, and he did
24 it for 20-some years, plus he's very, very active in the
25 professional government accounting and finance groups. He's

1 just a very wise guy, and he was really helpful. He was the
2 one who helped in the very early part on NIFA in terms of
3 defining what revenue is and how GAAP applies in a government
4 context, so Bob did -- I asked Bob to work on finance,
5 accounting, and IT, clearly areas of his expertise. I asked
6 him to work on pensions, and at various points in time I
7 asked him to help on things like state revenue sharing, so
8 things that were within his domain.

9 The third member of the team was Al Mink. Al is
10 kind of one our resident geeky CPA, CFA, you know, those
11 kinds of guys, prior experience in the private sector as a
12 CFO. He was the CFO of the Philadelphia Gas Works on an
13 interim basis. Strong accountant, strong budgeter. And he
14 and Bob -- he really worked on all of the areas of finance
15 and accounting and the IT area. Next was Mike Gaul. Okay.
16 Right away I looked at that. And I was going to say Al
17 has -- I forget where his undergraduate degree is. His MBA
18 is from Seton Hall, and he's got a whole bunch of letters
19 behind his name.

20 And then the next would have been Mike Gaul. Mike
21 has a business degree from Georgetown, done a lot of interim
22 management on the finance and operations side. Mike handled
23 most of the revenue. He handled the revenue that -- most of
24 those revenue items. He worked on pension, did some
25 drafting, some first drafts on those sections, worked with me

1 on blight, and then -- okay. That was Mike. And then -- I'm
2 forgetting some of Mike's areas.

3 And then there was Kevin Barr. Kevin is analyst --
4 phenomenal analyst. He's a Wharton grad. He's a CFA. Oh, I
5 know. Mike Gaul is a licensed investment banker, not that he
6 does a lot of that, but he is. Anyhow, Kevin was the person
7 that really understood the ins and outs of all of the plans
8 and the models, so Kevin -- and he worked with Mike on a lot
9 of the other revenue issues and those sorts of things.

10 And then at the end we added a junior person by the
11 name of Jack Murdoch as we were getting into the report
12 writing, and he basically did anything that Mike or Kevin
13 told him to do. So that was my team.

14 Q Does your report include any analysis or conclusions that
15 are beyond your expertise or the expertise of your team?

16 A I don't think so.

17 Q Are there any other facts that you think the Court should
18 consider in determining whether you are qualified as an
19 expert by your knowledge, skill, experience, training, or
20 education to testify to the opinions that the Court has
21 requested of you?

22 A I don't think so.

23 Q Let's turn our attention to the next issue under Rule
24 702, whether your testimony is based on sufficient facts or
25 data.

1 A Okay.

2 Q Do you believe that your opinions are based on sufficient
3 facts or data?

4 A I do.

5 Q Take your time and identify as specifically as you can
6 the sources of facts and data that your opinions are based
7 on.

8 A Okay. They fall into two broad categories, and that -- I
9 guess three broad categories. One would be information that
10 I and my team gathered from interviews and working sessions
11 with people. The second category would be information that
12 we gathered and analyzed from the city or constituencies in
13 this proceeding, and the third would be information that came
14 from parties outside this proceeding. So we -- between when
15 I was appointed and when we issued the report, we
16 participated and conducted over 200 meetings in that time
17 frame. I have met -- we'll just go through this -- the
18 mayor, the emergency manager, their respective staffs. I've
19 met with almost all of the department heads in the city, with
20 their financial people. Most of the department heads also
21 have a finance person. We've met with all of them.
22 Extensive work with E&Y, Conway. I've met with the
23 creditors' lawyers and financial advisors. I've worked with
24 AlixPartners, with FTI, with Alvarez, with Goldin, with
25 Houlihan, had dialogue back and forth with most of the

1 lawyers that are involved in this case. I've met with the
2 land bank. I've met with the Art Institute people. I've met
3 with benefactors to the city. I've met with the foundation
4 people. I've met with the city council and the chief of
5 staff of the city council. I've met with former city council
6 people. And then my team, some people have been involved in
7 those meetings. A lot of those I've done -- I did on my own,
8 but they have met and worked with almost everybody on the E&Y
9 team, almost everybody on the Conway team. They've also
10 worked with all of the department heads in accounting and
11 finance, so risk management, purchasing, treasury,
12 accounting. They've met with the auditor general. They've
13 met with the assessor, all of the IT people, police, fire, so
14 it's -- it is -- those people provided an enormous amount of
15 information not only as to what the city is doing from
16 rendering services but how those services are delivered and
17 how the costs flow from that, you know. Similarly, on the
18 revenue side, you talk to people in treasury about how monies
19 are collected and the interplay with the county, but they
20 also lead you to documents, and I would say -- I can't even
21 count how many documents we've probably collectively looked
22 at. There is a seven-page list of the tiny -- like five-
23 point font of documents that came to us from the city that
24 came because we asked, not because they were already in the
25 data room. So the city has the data room, and then when we

1 started requesting more information, they kept a separate
2 list of that and put all that stuff in the data room so that
3 anybody -- so that whatever I had everybody else could have
4 if they wanted. Now, you know, there are parties here that
5 probably don't care about the resumes of all of the
6 department heads, the subdepartment heads in finance, but I
7 care about that, so those are things like -- it's tens of
8 thousands of pages of information. And then the outside
9 information came from the blight task force, Future City's
10 reports, consulting reports, people just voluntarily sending
11 me things. Some of the other experts that you had
12 interviewed sent me information that they had used that they
13 thought would be helpful, so an enormous amount of
14 information. And then sometimes we would go -- it wouldn't
15 be -- we would then go to the city itself to the people in
16 either the departments or the finance and accounting and get
17 really granular data, so --

18 Q Okay. So who did you or your team talk to relating to
19 the pension issues?

20 A I had the first meeting on pension with -- it was at
21 Clark Hill, the lawyers for the Systems, and it was Bob
22 Gordon, then two gentlemen who were the general counsels of
23 each system. There was another lawyer that was in and out
24 that I don't recall his name. And those were my first
25 meetings on the pension system. Once I had a good overall

1 view of kind of what the pension issues were going to be, I
2 then delegated that to Brian Gleason and Mike Gaul and to Bob
3 Childree, and they had subsequent meetings with that same
4 group and then with other people at the city. I reinserted
5 myself in the pension discussions when I met and got to know
6 Dick Ravitch because Dick has some interesting views. We had
7 all -- we had known about Dick through his work before at the
8 Rockefeller Institute and some of those publications, and
9 obviously I relied heavily on Bob Childree's view on pensions
10 and appropriate funding, but, yeah, that was how we did that.

11 Q Were there any meetings with any of the pension funds' or
12 pensions plans' professionals or their advisors?

13 A I didn't have -- other than lawyers, I did not have. My
14 staff did with some telephone calls. I don't believe there
15 were any in-person meetings.

16 Q Okay.

17 A And there were -- I'm sorry. There were also pension
18 meetings with the city and Jones Day. There were a lot of
19 those.

20 Q Did you keep a contemporaneous log of all of the people
21 with whom you and the members of your staff communicated in
22 this assignment?

23 A I would say I did a 95-percent job on my own behalf, and
24 I know that once we decided -- it was a couple of days into
25 it that we decided the team needed to do the same thing, I

1 think they made a similarly diligent effort to keep that --
2 to keep those records, and I think between our detailed time
3 records and the contemporaneous log, I think between those
4 two documents, we've got it.

5 Q And so those logs or that time record have been made
6 available to the parties in the case?

7 A Yes.

8 Q Did you keep a list of the documents that you reviewed?

9 A My team did, and I kept a drawer in my office at the
10 CAYMAC of anything that I looked at that wasn't in the data
11 room or that came from the city, so like my copy of the
12 blight report, my copy of the triennial budget that came from
13 the city, those sorts of things I kept in a big file drawer,
14 and then when we were preparing our exhibit of documents for
15 the report, one of my team members came in and inventoried
16 that.

17 Q What was the condition of the city's financial
18 information during the time when you were doing your work?

19 A Again, I think of it in a couple of different ways. When
20 we got involved, the city had financial -- had completed its
21 audits through June of '12, okay, and were working on fiscal
22 '13. However, Ernst & Young had control of cash, so as has
23 oftentimes been my experience with troubled businesses, when
24 the bookkeeping gets out of sync in a time frame or
25 completeness, you go to cash. And the good news with the

1 city is that E&Y has been controlling cash for probably three
2 years now so that you can actually get answers to questions,
3 you know. You can get how many people are on payroll, what
4 does this cost, those sorts of things. The historical
5 records are not timely. It's a concern of mine. I've talked
6 about it. I complain about it all the time. And that's
7 because the information systems are so bad, so it is -- you
8 can get the answer -- you can get an answer that I believe is
9 truthful and accurate from the city. It'll just take you
10 awhile, and you have to go find someone who knows how to pull
11 it out of the awful bookkeeping and information technology
12 systems, so I mean it's -- they're bad, but they're no worse
13 than what I'm -- what I see in other places.

14 Q Well, that's my next question. Is it common for an
15 entity in need of financial restructuring or experience
16 problems -- to experience problems in providing adequate data
17 to an expert who is asked to evaluate its projections?

18 A Almost never -- and I have one client that I've had
19 recently that this is not true -- almost never does a client
20 or a party, you know, a debtor or a debtor in waiting have
21 adequate information that they can give to you on a real time
22 basis; right? It's just --

23 Q DIW.

24 A DIW, debtors in waiting. And they just -- it's never --
25 it's not timely. It's where they cut staff. It's where they

1 don't pay attention. It's always a mess.

2 Q Did anyone from whom you requested information withhold
3 that data from you?

4 A Ultimately, no.

5 Q Okay. Okay.

6 A I had to get you involved. No. I had to --

7 Q What do you mean by "ultimately"?

8 A Recall that I never got the working models of the
9 projections until Memorial Day.

10 Q And then you did?

11 A And then I did.

12 Q Were there other sources of data that, in your
13 professional judgment, you should have accessed in forming
14 your opinions?

15 A I don't think so.

16 Q Is there anything else you want to tell the Court about
17 the sufficiency of the facts or data that you used?

18 A Again, I think that at the end of the day I got
19 sufficient information. I was confident in the information
20 that I received or was able to get, right, because had I not,
21 I wouldn't have been able to come to my opinion, so while I
22 would still like to have more information about certain
23 things because I'm curious and I'd like to know more, at the
24 end of the day, I got what I needed or I couldn't have
25 rendered an opinion.

1 Q Let's turn to the next criteria under Rule 702, which is
2 whether your opinions are the product of reliable principles
3 and methods. Do you believe that your opinions are the
4 product of reliable principles and methods?

5 A I do.

6 Q Let's first review what principles and methods you used
7 were, and then we will discuss why you believe they are
8 reliable --

9 A Okay.

10 Q -- so please note that this criteria is not about whether
11 you reliably applied the principles and methods -- we'll
12 discuss that later -- this is just about the principles and
13 methods themselves and whether they are reliable, so take
14 your time and tell us about the principles and methods or
15 steps that you used in carrying out your assignment.

16 A Okay. I think the -- I go back to my proposal, which
17 laid out an approach that I envisioned using if I was
18 appointed in this case, and now after the fact I can look
19 back at that approach and say that's exactly what we did.
20 And it is -- is it a little bit different because of this
21 situation, sure, because everyone is, but it is the approach
22 that I have used my entire career and that other people in
23 the restructuring advisory community use, so in -- with the
24 City of Detroit, we collected about six years' worth of
25 historical data, sometimes a little bit more, sometimes a

1 little bit less, for all of the revenue and the expense
2 assumptions both in the ten-year plan, the ten-year, forty-
3 year plan and the RRIs, so we looked at historical
4 information. We looked at current spending levels or receipt
5 levels, depending on where it was because, again, didn't have
6 financial statements that were completed at that time.
7 Obviously looked at all of the reports that had been
8 developed by the various state agencies, the treasurer,
9 reports the emergency manager had done, gathered information
10 from all the outside consultants. I mean Detroit was a -- is
11 a -- was a city that was consulted to death, so used all of
12 that and then factored that in with all of the information we
13 gathered from all of the interviews and the analysis. And
14 what was going on from in late April and May until we got the
15 working models is Kevin Barr was, in essence, building a
16 bridge between the projections and the RRIs, so by the time I
17 actually got the working models and could say, ah, that's the
18 assumption for this revenue projection or, oh, I really see
19 that now for the expense, Kevin had reverse engineered most
20 of this model so that we actually could look at the
21 underlying assumptions, look at the baseline, what the
22 starting numbers were, and see if those projections made
23 sense going forward, so it is -- in restructuring history,
24 it's important for certain kinds of revenues and expenses if
25 they're going to continue, but the other thing that happens

1 with restructuring, thank goodness, is activities in the past
2 can be radically changed as a result of the restructuring, so
3 sometimes you can -- you know, perfect example here is with
4 lighting; right? You wouldn't project lighting revenues to
5 go forward when you've transferred the lighting authority
6 over to a different entity, so you just make an individual
7 assessment on each assumption. And after you do that, then
8 you do the sensitivity analysis on your critical assumptions
9 to see if you're going to be wrong and you know you will be
10 wrong with projections, right, which are the assumptions that
11 a small change in the assumption will create a big impact in
12 the projections.

13 Q So to what extent did the fact that this is a municipal
14 case rather than a business case impact the principles or
15 methods that you used?

16 A It didn't impact the principles or the methods or the
17 approach. The difference in it is that there is not an
18 option to stop doing things because the city has to deliver
19 some sort of basic service. You can't -- just because it
20 costs too much to run that bus route doesn't mean you get to
21 stop it.

22 Q To what extent did the time deadline that the Court
23 imposed upon you impact the principles and methods that you
24 used?

25 A It did not impact -- I mean it did impact; right? It

1 impacted the level of effort. It impacted the size of my
2 team; right? For the kinds of work we do at Phoenix, you
3 know, six people in one place full time is a huge team of
4 resources.

5 Q Right, but my question is the impact on the methods and
6 principles.

7 A It didn't -- it really didn't impact the method and the
8 principles. I think there are points where when I got
9 satisfied with an issue or something, I said stop doing that;
10 right? So, you know, at the end of the day when I knew what
11 my perspective was going to be on IT, right, it's like stop
12 going deeper onto that; right? Just stop. So I think there
13 were points in time where I probably pulled my team back from
14 continuing to go deeper into issues that I felt we had
15 adequately covered.

16 Q So did the time limit result in any compromise of your
17 professional judgment or conclusions or methods in the case?

18 A No, because I asked you twice for extensions; right? I
19 mean I knew that first time that there was no way that I
20 could get done what I needed to get done given when I had got
21 in the working models, and then at the end I needed those
22 last few days because we had gotten a new set of projections,
23 so --

24 Q Um-hmm. Apart from what you've already mentioned, are
25 there any other factors in the case that impacted the

1 principles and methods that you used?

2 A No, not really. I was asked in my deposition about
3 methods, and I actually went back and looked at those because
4 I hadn't heard those words since I was in grad school. So
5 there's a big method and a little method. I think the little
6 method, the approach that I used in this engagement, is the
7 approach that restructuring advisors, whether they're working
8 for a debtor, a company, a municipality, or advising a
9 creditor, that's what you do. You look at history. You
10 sensitize it. You judgmentize it. You talk to people about
11 it. You get down to source documents. And then you make a
12 projection with -- that you feel is reasonable, and I think
13 that's what we do. Do we do things like time series
14 analysis? We do. Do we do regression analysis? We do. But
15 we don't sit down and say, "Oh, my God, I'm going to use the
16 delphi method to estimate this," or, "I'm going to use the
17 naive" -- those are just -- those are like Wikipedia words,
18 and I recall them now that -- from a long, long time ago, but
19 we did do some of that.

20 Q Was it part of the methods that you used in this case to
21 reconstruct from scratch the -- or a set of financial
22 projections for the city's general fund?

23 A No. That was not -- that was not my scope, and that's
24 not what I would do in the role of evaluating any plan.

25 Q Do experts in your field when evaluating feasibility

1 normally reconstruct financial projections like that?

2 A No.

3 Q Are there any circumstances when this is done within the
4 scope of this kind of an assignment?

5 A I thought about that. I did it once in 1991 in a case
6 called Lang Laboratories, and I represented the creditors.
7 And about 30 days into that case, the CEO resigned. We
8 agreed with the company to do a complete exchange of debt for
9 equity, and at that point in time the creditors' committee
10 advisors took over all the rest of the work on the
11 reorganization plan, and, yes, so we really -- we started all
12 over, but that was -- it was like 1991 that I did that.

13 Q Just so our record is complete, why did you not do that
14 in this case?

15 A Because it doesn't make sense to do that. My job was to
16 evaluate the plan -- or my job still is to evaluate the plan
17 and the projections that underlie that.

18 Q Okay. Let's turn our attention to the reliability of the
19 principles and methods that you used. Do you believe that
20 your education, training, and experience has given you an
21 understanding of the principles and methods that others use
22 in your field and that are generally accepted when assessing
23 the feasibility of municipal restructuring plans or a debt
24 adjustment plan in a Chapter 9 case?

25 A I do.

1 Q Are any of the principles and methods that you used in
2 this case materially different from the principles and
3 materials -- principles and methods that are generally
4 accepted in your field when the assignment is like it was in
5 this case?

6 A I don't think so.

7 Q Are there reliable principles and methods for evaluating
8 a 40-year projection for either a business or a municipality?

9 A I don't think so.

10 Q Why not?

11 A Because 40 years is so far into the future that it is
12 very, very, very, very hypothetical, and as I was thinking
13 about what 40 years ago was from today back, it's -- we were
14 all children, and I can't imagine what the city's budget
15 would have looked like 40 years ago because we had just had
16 the first oil embargo and, you know, how that would have
17 affected automobiles and the development of the city, so
18 it's -- 40 years is such a long time horizon that while I
19 think it is instructive to think about it, right, there's no
20 reliable method for projecting 40 years in the future.

21 Q Is that a view that you would say is generally held
22 within your field?

23 A It is.

24 Q What was the definition of feasibility that you decided
25 to apply in determining whether the city's plan of adjustment

1 is feasible?

2 A It was a definition that I developed.

3 Q What was it?

4 A We spent a lot of time getting the words right on this,
5 and it would be better if I had it to read. I know it's on
6 page 13, which was kind of an easy to remember page; right?
7 The feasibility definition -- and I'll do it as best I can
8 from memory -- is is it likely that the City of Detroit,
9 after confirmation of the plan of adjustment, will be able to
10 sustainably provide basic municipal services to the citizens
11 of Detroit and make the -- and meet the obligations in the
12 plan without the probability of a significant default.

13 That's close.

14 Q Um-hmm.

15 A But it has three concepts. It has provide services, meet
16 plan obligations, and not likely default.

17 Q Um-hmm. And how did you decide that that was the
18 appropriate definition?

19 A It evolved out of my view that feasibility is both a
20 quantitative and a qualitative measure, that, yes, there
21 are -- there's the numbers side. Can you generate the
22 revenue? Can you deliver the services at a price point such
23 that you've got enough cash to make plan payments? But it's
24 also about the skill and the will, and this goes to the
25 management, the human capital side. Do you have people who

1 are left behind who can execute on the plan?

2 Q Is that definition or one similar to it generally
3 accepted in your field as an appropriate definition of
4 feasibility?

5 A Well, I think time will tell. I think this is the first
6 time that anybody in my profession has tried to define
7 feasibility in a Chapter 9, so I think it makes sense, but I
8 think time will tell. Ultimately you'll decide.

9 Q Is that definition of feasibility or one like it
10 generally accepted in the business context?

11 A I think it is, and I think the -- again, we don't get any
12 help from the Code in terms of what feasibility is. On the
13 commercial side we've got a lot more case history, so, like I
14 said, it makes intuitive sense to me that it's both
15 qualitative and quantitative. There's clearly a time horizon
16 concept with feasibility, which I think is more challenging
17 in the Chapter 9 environment, and I also think the
18 feasibility is a range. It is a -- values can have -- can be
19 reasonable and feasible within a range. They're not just a
20 point estimate.

21 Q So do you see any reason to use a different definition in
22 a municipal case compared to a business case?

23 A Only to the extent that I think it is important that the
24 municipality be able to sustainably deliver basic municipal
25 services. They don't have to be best in class. I've said

1 that, but they've got to be able to deliver basic services.

2 Q Is there anything further that you'd like to tell the
3 Court about the principles and methods that you used or their
4 reliability?

5 A I don't think so.

6 Q So, finally, let's turn our attention to the last
7 criteria under Rule 702, whether you reliably applied to the
8 facts of this case the principles and methods that you chose
9 to use. Do you believe that you reliably applied to the
10 facts of the case the principles and methods that you chose
11 to use?

12 A I do.

13 Q One of your two tasks, as you've pointed out, was to
14 investigate and reach a conclusion on whether the assumptions
15 that underlie the city's cash flow projections and forecasts
16 regarding its revenues, expenses, and plan payments are
17 reasonable. Did you carry out that task?

18 A I did.

19 Q Could you define for the Court what is an assumption?

20 A An assumption is -- I'm thinking of synonyms. It's a
21 hypothesis. It's an axiom. It's a presumption. It is
22 something that you believe is going to happen. You take it
23 for granted that it's going to happen.

24 Q Is that the generally accepted definition of assumption
25 in the field?

1 A I think so, yes.

2 Q Can you estimate how many such assumptions underlie the
3 city's cash flow projections and forecasts regarding its
4 revenues, expenses, and plan payments?

5 A It's many hundreds and arguably probably thousands. The
6 projections are contained in over 300 spreadsheets that are
7 assimilated into the various projections in the RRIs, and
8 each of those have many columns and many lines. And you
9 would logically expect an assumption to be associated with
10 each line item over time, so, you know, it's clearly,
11 clearly, clearly, clearly into over the hundreds into the
12 thousands.

13 Q Did you investigate each and every one of those
14 assumptions?

15 A Kevin Barr has looked at every cell in every sheet and
16 can tell you where it comes from and how it's calculated.

17 Q Earlier you used the phrase "critical assumption."

18 A Yes.

19 Q What does that phrase denote or mean?

20 A Again, it's a word that I chose when we were putting our
21 proposal together in recognition of the complexity of what
22 these projections were going to look like. And I knew once
23 we got underneath them that they were going to be complex,
24 and I knew that the fact that there were multiple parts of it
25 that piece together was going to make it -- was going to make

1 it complicated, but -- and given the time frame, there are
2 critical assumptions that either lay the foundation for many
3 of the other assumptions or they're critical because they're
4 so sensitive to small changes having big impacts that you
5 really had to look at them, so --

6 Q Okay. So that's my next question.

7 A Yeah.

8 Q What is the purpose of identifying some of the
9 assumptions as critical assumptions?

10 A Because there are -- there is some subset of those
11 thousands of assumptions that are really, really important,
12 so, for example, right, one of the most critical assumptions
13 in the city's projections are the head count assumptions, so
14 at a foundational level, we've got to get comfortable that
15 the projected head count by department of people doing what
16 they're doing, right, makes sense.

17 Q You're talking about employment head count?

18 A Employment head count because, you know, again, you've
19 got 60-plus percent of your costs that are derived either
20 from salaries, wages, or benefits that are paid, so you
21 better have the head count projections. You better be
22 comfortable with that before you move on to say that, you
23 know, the budget for this department or that department is
24 okay, so that's an example.

25 Q Is it generally accepted within your field to separate

1 assumptions by how critical they are in --

2 A It is.

3 Q -- determining whether and to what extent to investigate
4 them?

5 A It is because it's the -- it's a cost-benefit analysis so
6 that you can -- you know, you want to make sure that you get
7 all of the important assumptions analyzed, critiqued,
8 evaluated, and the lesser assumptions either will have very
9 little impact or you may run out of time or you may run out
10 of budget to do them, so --

11 Q Was there ever an instance in the case when someone asked
12 you to investigate an assumption because they thought it was
13 a critical assumption but you decided not to?

14 A Not that I recall.

15 Q Were there any assumptions that, in your judgment, should
16 have been investigated as critical assumptions but for
17 whatever reason you did not investigate?

18 A No.

19 Q Well, what challenges or obstacles did you face in
20 reliably applying to the facts of the case the principles and
21 methods that you chose to use?

22 A Other than initially getting access to data that we felt
23 was important that maybe the city either hadn't already
24 collected or didn't think was important, once we kind of got
25 over that hump, then there really weren't any other

1 impediments.

2 Q Okay. So you're satisfied that you worked through those
3 challenges or obstacles?

4 A Yeah. I couldn't have rendered an opinion.

5 Q So there were no challenges in this regard that you did
6 not successfully meet or overcome?

7 A That's correct.

8 Q Is there anything further that you want to tell us about
9 the reliability of your application of the principles and
10 methods that you used?

11 A Not that I can think of.

12 Q Let's address some of the more specific objections or
13 issues regarding your testimony that the parties asserted in
14 their motions even though some of them have been withdrawn.

15 A Okay.

16 Q Are you generally familiar with those issues that the
17 parties have raised?

18 A I am.

19 Q How have you become familiar with them?

20 A I read the pleadings, and then I discussed them with my
21 attorneys.

22 Q Do you believe that any of those objections have merit?

23 A I don't.

24 Q All right. So what I'm going to do now is summarize each
25 objection and simply ask you how you respond to it.

1 A Okay.

2 Q One objection, for example, is that you did not actually
3 test the reasonableness of a majority of the city's
4 assumptions in its forecasts and that instead you opined that
5 the city's assumptions are reasonable when considered in the
6 aggregate.

7 A Okay.

8 Q What is your response to that objection?

9 A My response is that we did look at individual
10 assumptions. We did analyze them. We did critique them
11 individually. We looked at the assumptions in total
12 obviously in the result. My challenge is with the word
13 "test." Okay. This is not a blood test. You can't put a
14 dipstick in it and get something to turn blue or pink. Okay.
15 You have to look at the information about the assumptions and
16 the data, so when you look at my report, much of -- and let's
17 go back to the head count example; right? The head count
18 analysis that we did in looking at the individual assumptions
19 around head count by department over time, right, that
20 information is information that we pulled together so that we
21 could analyze it. That isn't something that somebody gave
22 us. That is something that Kevin developed. So did you test
23 it? I got a problem with the "testing" word. Did we analyze
24 it? Did we verify it? Did we make sure that the head count
25 that we looked at in different places made sense? Absolutely

1 we did. Did we do that for every single assumption? No,
2 because some of them are minor. Again, some of them are
3 minor, but I do believe that for all of the assumptions
4 individually, collectively we did it. I only -- in my report
5 I only called out certain of the assumptions that I either
6 thought were important to make a statement that I agreed with
7 or certain of the assumptions that I felt it was important
8 that I make a statement that I don't agree with. So I think
9 silence on some of the assumptions has maybe been
10 misconstrued as I didn't look at them, but that's not the
11 case.

12 Q Another objection that was made is that there is no way
13 to test some of your opinions on some specific assumptions.
14 How do you respond to that?

15 A Again, I don't know how to respond to that because it
16 doesn't make sense to me. This is not -- this is not a
17 laboratory experiment; right? We're not putting two
18 chemicals together to see if we get smoke; right? It is you
19 look at information, you analyze it, and you assess its
20 veracity and validity.

21 Q It is also asserted that you did not make any
22 determination about the quality of E&Y's work.

23 A I read that, and I remember at some point being asked
24 about that, and I didn't -- I relied on what E&Y did. I
25 trust their professionalism. I believe they were honest with

1 me. We checked all the math; right? So I didn't have to --
2 I didn't have to just accept it; right? We went and checked
3 all the math, and we verified the assumptions, so I just
4 didn't feel a necessity to make a statement about the quality
5 of their work or similarly about Conway's work, but I mean
6 they've done an amazing job; right? Do I agree with
7 everything they've done? Absolutely not; right? Would they
8 agree with everything I did? Absolutely not. But it's not
9 like anything is inferior or substandard or unprofessional.

10 Q Well, was your assessment, evaluation, review, reliance
11 on E&Y's work, consistent with what is generally accepted in
12 the industry in these kinds of circumstances?

13 A Absolutely. When you're the evaluator of the plan and
14 the projections as opposed to the developer, I think most
15 evaluators, based on reputation, prior experience, whatever,
16 would tend to rely on the preparer to some level based on
17 their own ability to review and analyze.

18 Q It is asserted that you did not understand the city's
19 methodology and, therefore, could not have evaluated it. How
20 do you respond to that?

21 A I got a little bit tripped up with this big M, little M
22 thing. I got asked about methodologies from an academic and
23 a textbook perspective, and I wasn't very facile with those
24 words. I knew what we did. We did trend analysis. We did
25 time series. We looked at regressions. We looked at

1 sensitivities. I didn't -- I don't think about that. That's
2 not the words that people in my business use even though when
3 I look in retrospect we absolutely did use some of those
4 methods.

5 Q It is asserted that you were forced to rely on the city's
6 unreliable and insufficient data and only when the city was
7 willing to provide it to you because you did not have
8 sufficient time to independently verify it.

9 A I don't believe that -- I mean there was -- there's never
10 been a context in my career where you go in and you reaudit
11 something. That doesn't make any sense. Okay. It's
12 historical. You rely on the information that's there that's
13 been audited by other folks that's been put into the city's
14 annual report, so there wasn't -- even if I'd had all the
15 time in the world, it's not something I would have done
16 because it wouldn't have provided much value.

17 Q It is asserted that you lack experience with municipal
18 finance and budgeting.

19 A I disagree with that.

20 Q Based on your work in Nassau County and with the Legal
21 Aid Society and --

22 A Yes.

23 Q -- with your staff's work with Jefferson County and
24 Philadelphia and the other experiences?

25 A We have a -- we have a lot of experience with municipal

1 budgeting and finance both from a preparer and an evaluator's
2 perspective.

3 Q We'll hear more about this in a moment, but it is
4 asserted that you lack the qualifications to give opinions
5 and conclusions relating to pension issues.

6 A I disagree with that. I agree that I am not an actuary,
7 that I could not do an actuarial calculation. Quite frankly,
8 I don't know how anybody did those things before computers
9 because they're just -- they're mind-numbing; right? But,
10 again, pension issues are not magical. They're not a super
11 science that we can't understand. Everybody in this room can
12 understand basic concepts around pensions, how benefits are
13 calculated, how liabilities are calculated, how investments
14 are made, how monies are discounted, so I just disagree with
15 that.

16 Q A theme that came through the objections was that you
17 were on the city's side in this case. Were you biased in
18 favor of the city?

19 A No. I don't think the city would say that at all.

20 Q Did you come into this assignment with any preconceived
21 notion regarding the feasibility of the city's plan of
22 adjustment or the reasonableness of its assumptions?

23 A I didn't. I would not have put myself forward if I had
24 had some perspective.

25 Q Is there anything else in the objections that you read

1 that you want to address?

2 A I don't remember them all, but I don't think so.

3 Q Okay. Just some final questions and conclusions here --
4 in conclusion here. Have you reviewed the transcript of your
5 deposition?

6 A I have.

7 Q Is there any testimony in your deposition that you want
8 to correct or clarify?

9 A No. There's nothing in my testimony that needs to be
10 corrected or clarified. There are typographical and phonetic
11 spelling errors which we've not undertaken to do an errata
12 sheet, but, you know, in reading it, are there things I'd
13 like to explain better, but realizing that that's not the
14 opportunity for me to have a say -- I'm just answering
15 questions -- I don't think that there's anything that's
16 technically wrong with my testimony.

17 Q In these circumstances, the Supreme Court made the
18 following statement, and for the lawyers in the room it's
19 Kumho Tire versus Carmichael, 526 U.S. 137, 1998 -- quote,
20 "The objective of that requirement is to ensure the
21 reliability and relevancy of expert testimony. It is to make
22 certain that an expert, whether basing testimony upon
23 professional studies or personal experience, employs in the
24 courtroom the same level of intellectual rigor that
25 characterizes the practice of an expert in the relevant

1 field." Did your work in this case meet that standard of
2 intellectual rigor that the Supreme Court described?

3 A Absolutely.

4 Q Finally, do you plan to update your report?

5 A I have heard that we're getting a new plan maybe later
6 today or tomorrow with new projections, so probably.

7 Q I take it that until you see that, you're probably not in
8 a position to see how much work that would involve or what
9 the timing of that would be?

10 A I don't. I don't have any idea.

11 Q Okay.

12 THE COURT: All right. That's all the questions I
13 have. Let's take a break now for 15 minutes until 3:30, and
14 then we'll see if others have questions, so I will see you
15 then.

16 THE CLERK: All rise. Court is in recess.

17 (Recess at 3:13 p.m., until 3:29 p.m.)

18 THE CLERK: All rise. Court is back in session.

19 You may be seated.

20 THE COURT: Okay. Ms. Green, do you have questions?

21 MS. GREEN: Yes, I do.

22 MR. STEWART: I have no questions.

23 CROSS-EXAMINATION

24 BY MS. GREEN:

25 Q Good afternoon. It's Kopacz as in rhymes with topaz;

1 correct?

2 THE COURT: Could you --

3 MS. GREEN: Thank you.

4 THE COURT: -- pull the mike --

5 MS. GREEN: Yes.

6 THE COURT: -- right in front of you and talk
7 right --

8 MS. GREEN: Just wanted to make sure --

9 THE WITNESS: Yes, yes.

10 MS. GREEN: -- I had the pronunciation right.

11 BY MS. GREEN:

12 Q I wanted to go over a little bit of your prior experience
13 at Nassau County. You identified your engagement there as
14 involving some pension-related work; correct?

15 A I'm sorry. My involvement where?

16 Q At Nassau County.

17 A Oh, in Nassau County, yes.

18 Q And you identified your involvement there as having some
19 pension-related work; correct?

20 A Pension was a significant budgetary item for Nassau
21 County, so, yes, we did look at it.

22 Q But there the state provided a backstop, and so you did
23 not have to opine as to the cause of the underfunding;
24 correct?

25 A The state actually funded and took a deduction from the

1 county.

2 Q And I believe you stated that you only looked at the
3 future funding requirements for Nassau County as part of that
4 engagement; correct?

5 A That's correct.

6 Q And at the Legal Aid Society you testified that your
7 involvement with respect to pensions was to change a defined
8 benefit plan to a defined contribution plan?

9 A We froze one and changed one.

10 Q Okay. But your role in this case has nothing to do with
11 changing the Retirement Systems in Detroit from a defined
12 benefit plan to a defined contribution plan; correct?

13 A That's correct.

14 Q And the scope of your engagement here is on two items,
15 correct, feasibility and the reasonableness of the city's
16 projections?

17 A Yes.

18 Q And you were not retained to opine on past investment or
19 actuarial practices of the Detroit Retirement Systems;
20 correct?

21 A Correct.

22 Q And you were not retained to opine about the
23 appropriateness of the former assumed rate of return for the
24 pension systems; correct?

25 A I don't believe I have. That's correct.

1 Q And you were not retained to opine on the appropriateness
2 of any smoothing method or amortization period used by the
3 Detroit Retirement Systems; correct?

4 A Correct.

5 Q And you were not retained to recommend proper pension
6 plan reporting requirements for the Detroit Retirement
7 Systems; correct?

8 A I said during my interview with the judge that to the
9 extent that my involvement -- out of my involvement I would
10 hope that it would improve aspects of the plan or aspects of
11 the communication around the plan that I intended to include
12 that in my report.

13 Q But that's not laid out in the order appointing you as an
14 expert witness; correct?

15 A It is not in my order.

16 Q Okay.

17 A Correct.

18 Q Thank you. And you were not retained to opine on the
19 causes of the pension plan's underfunding; correct?

20 A Correct.

21 Q And I believe you just testified earlier that you admit
22 that you are not an expert in the realm of public pensions.

23 A I am not. I said I am not an expert. I am not an
actuary. I do not consider myself to be a pension expert.

25 Q And you're also not experienced as an investment manager

1 of a public pension fund; correct?

2 A No. That's correct.

3 Q And you've never opined or given any conclusions as to
4 the proper rate of return for a public pension fund; correct?

5 A Correct.

6 Q And you're unfamiliar with smoothing mechanisms and
7 amortization periods used by public pension funds; correct?

8 A I don't think that's correct. I mean I'm familiar with
9 them.

10 Q If I asked you if you could opine on the appropriateness
11 of, for instance, a seven-year smoothing period, you would
12 agree with me that you would not be able to answer that
13 question; correct?

14 A I would have to study that question.

15 Q And similarly with respect to an appropriate amortization
16 period, you would have no basis to know whether a five- or a
17 ten- or a twenty- or thirty-year amortization period would be
18 an appropriate period for a public pension plan such as
19 Detroit's; correct?

20 A I would have to study that, yes.

21 Q And you're not published in the area of public pensions
22 or actuarial science; correct?

23 A Correct.

24 Q And when asked when any of the pension risks that you
25 cite in your report give you any pause with respect to the

1 city's plan of adjustment, you would agree that the long-term
2 risks associated with the pension plans do not negatively
3 impact your assessment of feasibility; correct?

4 A I'm sorry. Could you either repeat it or break it down?

5 Q I can. I can.

6 A Thanks.

7 Q The pension risks that are cited in your report, you
8 would agree with me that your conclusions do not impact
9 feasibility or your assessment of feasibility of the city's
10 plan of adjustment; correct?

11 A I think we need to talk about what pension risks we're
12 talking about.

13 Q Well, you didn't identify any particular pension risk
14 that caused you to conclude that the city's plan was not
15 feasible; correct?

16 A That's correct.

17 Q I believe you just stated that pensions are not magical.
18 They're not a super science. But you agree that you are here
19 being offered solely as an expert witness; correct?

20 THE COURT: I would agree with that.

21 THE WITNESS: Okay. Then I'll agree with that.

22 BY MS. GREEN:

23 Q Okay. So you did not personally interact with the
24 Detroit pension systems prior to your engagement in 2014;
25 correct?

1 A Correct.

2 Q Okay.

3 A Correct.

4 Q So you have no first-hand knowledge before your
5 engagement by the Court into the Detroit Retirement Systems?

6 A That's correct.

7 Q With respect to investment rates of return used
8 previously by the Retirement Systems, you did not do a
9 detailed comparison of the Detroit Retirement Systems assumed
10 rate of return compared to other public pension plans in your
11 work --

12 A Correct.

13 Q -- correct? And you did not make any efforts to quantify
14 what portion of any funding shortfall was attributable to any
15 allegedly aggressive rates of return; correct?

16 A I did not analyze the causes of the shortfall.

17 Q Let's discuss your conclusions relating to the Retirement
18 Systems investment practices.

19 A Um-hmm.

20 Q You had no quarrel with the Systems' investment
21 distributions or asset allocation; correct?

22 A I don't recall having any quarrel with that.

23 Q And you never looked at the written investment policies
24 for either of the Detroit Retirement Systems?

25 A I did not, but someone on my team did.

1 Q And if asked about which specific investments you believe
2 to be risky, you cannot identify any particular investment by
3 name; correct?

4 A I have -- other than the supposed investments that the
5 former mayor directed to his business associates and friends.

6 Q But you did not quantify whether that particular
7 investment actually contributed to any funding shortfalls;
8 correct?

9 A Correct.

10 Q And you did not actually analyze the asset mix in the
11 Retirement Systems' investment portfolio; right?

12 A Like I said, I didn't do it. I know someone on my team
13 looked at that asset mix and gave me their perspective, yes.

14 Q And after looking at it, then there was no quarrel with
15 the particular asset mix used by the Systems?

16 A It was not something that we went further into; correct.

17 Q And at the time you prepared your report, you had no
18 information reflecting negatively on the current pension
19 advisors to the city; correct?

20 A No. That's correct.

21 Q And at the time you prepared your report, you had not met
22 with any of the Retirement Systems professional investment
23 consultants; correct?

24 A Correct. I did not. I don't know -- like I said, I
25 think people on my team had conversations with them but

1 didn't -- I don't think that they met with them.

2 Q Well, let's identify who those professional consultants
3 were. If your communications log did not list meetings with
4 NEPC or Wilshire, would that change your testimony as to
5 whether people on your team met with the --

6 A Those are the current consultants; correct?

7 Q Correct.

8 A Correct. Yes. Like I said, I don't -- I can't tell you
9 anything more than I've told you. I don't know that they
10 have not met. I believe they met with somebody at least
11 telephonically at some point.

12 Q And, similarly, you did not meet with or consult with the
13 Retirement Systems chief investment officer, Ryan Bigelow;
14 correct?

15 A That's correct.

16 Q And you never met with the Systems' actuaries -- the
17 current actuaries either; correct?

18 A I did not; correct.

19 Q Or any of the trustees for either System?

20 A I think that maybe one of the people that I met with at
21 Clark Hill was on the board.

22 Q Would you be able to identify that person? Let's do it
23 this way. If they were not listed on your communications log
24 as being present at the meeting --

25 A A trustee? Okay.

1 Q -- would that reflect that they were not present?

2 A That would reflect my -- that would be correct.

3 Q Okay. And you did not investigate when the Systems were
4 fully funded versus when they became underfunded; correct?

5 A Correct.

6 Q And you agree that in terms of feasibility, knowing the
7 timeline of events relating to the underfunding is not
8 something that you cared about in your analysis; correct?

9 A Correct.

10 Q And you admit that there are no allegations of misconduct
11 against current trustees in relation to either Retirement
12 System?

13 A I have no knowledge of that one way or another.

14 Q And you're aware that there are certain governance
15 changes being imposed under the plan within each Retirement
16 System; correct?

17 A Like I said, I don't know that one way or another.

18 Q You would agree with me that past misconduct, whether
19 true or not, did not impact your feasibility analysis?

20 A That's correct.

21 Q And you never attempted to quantify the actual economic
22 impact that you would have attributed to any alleged
23 misconduct within the Retirement Systems; correct?

24 A That's correct.

25 Q And you admit that certain portions of your report

1 consisted of words that you took from a declaration of
2 Charles Moore; right?

3 A Yes.

4 Q And you never independently verified the factual points
5 that you took from the Charles Moore declaration; correct?

6 A I did not personally. That's correct.

7 Q And your instructions to your team were to cite
8 information that already existed in the record; correct?

9 A That is correct.

10 Q Let's talk about the due diligence relating to the cause
11 of the Systems' underfunding. You did not look at what
12 typical losses were to other public pension systems during
13 the great recession; correct?

14 A I did not.

15 Q And you did not consult any publications or studies to
16 compare how the Detroit Retirement Systems fared compared to
17 other public systems as a result of the great recession;
18 correct?

19 A Generally, I'm aware of what happened both in the public
20 and the private sector during that time frame, so I didn't
21 really feel a need to look historically in terms of that.

22 Q And you did not review any data from the U.S. Census
23 Bureau related to public pensions during that time period?

24 A Not that I recall, no.

25 Q And you did not review the NASRA public funding survey

1 for that time period; correct?

2 A I think we did review NASRA.

3 Q And do you agree that the NASRA report concluded that the
4 market decline in 2008 resulted in a median investment return
5 for public pension funds of a negative 25.3 percent for the
6 year 2008?

7 A I would have to look at the publication again, but the
8 losses were in the 20-plus percent category.

9 Q And you would agree that the losses to the Detroit
10 Retirement Systems were actually in line with the figures
11 that were published by NASRA; correct?

12 A As I said, I don't remember the two data points. I know
13 that they were both in the minus 20's.

14 THE COURT: Let me caution you to restrict your
15 questions to those that relate to Daubert issues. This
16 sounds like it's wandering into more substantive --

17 MS. GREEN: It does relate --

18 THE COURT: -- opinion testimony.

19 MS. GREEN: -- your Honor, to the -- whether she
20 looked at particular data points and whether her methodology
21 would have been reliable based on what she looked at, but I
22 only have a few more questions and I'm done.

23 THE COURT: Well, but you're asking her what her
24 opinions were having done that.

25 MS. GREEN: Okay.

1 THE COURT: That's where the --

2 MS. GREEN: I will restrict them.

3 THE COURT: -- line gets crossed.

4 BY MS. GREEN:

5 Q Regardless of the cause of the underfunding, you agree
6 that in terms of your feasibility analysis, what was
7 important to you when you wrote your report is how the
8 Retirement Systems are being dealt with in the future under
9 the city's plan; correct?

10 A That's correct.

11 MS. GREEN: Thank you, your Honor.

12 THE COURT: Okay. Does anyone else have any
13 questions for the witness? I have nothing further. You are
14 excused. Thank you very much for coming today. We will let
15 you know when we need you back. And let me know when you
16 come to a conclusion about when you'll do your supplemental.

17 (Witness excused at 3:44 p.m.)

18 THE COURT: Ms. Green, did you want to make an
19 argument?

20 MS. GREEN: I have to admit that objecting to the
21 testimony offered by the Court-appointed expert is a little
22 awkward. I feel like Mr. Hackney must have last week when he
23 objected to your questions of Chuck Moore. But as you
24 commented then, every once in awhile the Court sustains its
25 own objection, and --

1 THE COURT: That's true.

2 MS. GREEN: -- so I will proceed. Our motion is
3 limited, and it is not intended in any way to --

4 THE COURT: Hang on. Hang on. I always sustain my
5 own objections. What I only sometimes do is sustain other
6 parties' objections to my questions.

7 MS. GREEN: Either way, our motion is limited. It's
8 not intended to stifle in any way Ms. Kopacz's feasibility or
9 her opinions regarding the reasonableness of the city's
10 projections, and we're not disputing her qualifications in
11 that aspect. Her municipal finance and restructuring
12 expertise were well-established during your direct
13 examination of her. But as she admitted, she's not a
14 pensions expert and not an actuary. She's not an investment
15 manager. And to the extent that certain of her opinions
16 relate to pension systems and the cause of the underfunding
17 and all those sorts of things, we feel that it's
18 inappropriate to have her testify.

19 She also stated that pensions are not magical,
20 they're not a super science and that they don't even require
21 expert testimony under 702. If that's the case and she's
22 only being offered as an expert witness, then I don't think
23 it's appropriate to have her testify at all because she's not
24 a percipient witness. And under Rule 601, as a lay witness,
25 she would be unable to have any firsthand knowledge about our

1 underfunding, mismanagement, actuarial practices, things of
2 that nature, so for that reason, had I known that before we
3 submitted our motion to the Court, I would have added the
4 argument that if she's not an expert, then -- I'm sorry -- if
5 it doesn't require expert testimony, then there would be no
6 need for her to opine on those either way.

7 Furthermore, the scope of her testimony was limited
8 by your order to two discrete subjects, and all of the
9 pension-related opinions that she lists in her report go well
10 outside the bounds of that. She affirmed today that her
11 feasibility analysis is not impacted by any of her
12 conclusions relating to past investment practices or past
13 actuarial practices of the systems, and, therefore, under
14 your order, it's not relevant to these proceedings or to plan
15 confirmation. And I believe that the reason that you had
16 appointed a feasibility expert was because you were concerned
17 that there would be no adversarial process relating to
18 feasibility, but, as you've seen, that's not the problem with
19 the pension issues. There are experts on both sides, and
20 it's hotly contested outside of Ms. Kopacz's testimony.
21 Therefore, I think, again, it's almost duplicative or
22 cumulative of the other testimony that you'll hear in the
23 proceedings.

24 Finally, if she is not an expert, as we stated in
25 our other motion, which has not yet been decided, regardless

1 of whether she's an expert, the report itself should not come
2 in. It's inadmissible hearsay. The protocol we've been
3 using throughout these proceedings is not to admit an expert
4 witness' report because it is hearsay, and so the Retirement
5 Systems also object to the admissibility of her report into
6 the record as evidence. Thank you.

7 THE COURT: Thank you. Would anyone else like to
8 say anything about the Daubert issues? I want to hold on the
9 issue of admissibility for right after this.

10 MR. STEWART: Your Honor, Geoffrey Stewart of Jones
11 Day for the city, and I'll be very brief. First of all, as
12 to the scope of the assignment, feasibility is a very broad
13 charge, and nothing is more key to feasibility than whether
14 the city in the years that are yet to come is going to be
15 able to service the pension obligations it will see, which
16 could well be crushing. It is for that reason issues such as
17 the investment return assumption, pension, all the other
18 things we heard from Bowen, we'll hear from others, are, in
19 fact, key to that just as they're key to other things, too,
20 so I don't think it's beyond the scope of the assignment, per
21 se.

22 As to expertise, Ms. Kopacz testified that although
23 she may not be an expert in this, she is able to understand
24 it, and she dealt with at least three, if not four, people
25 who were experts, first of all, Mr. Gaul, then Mr. Childree,

1 then Mr. Gleason, and finally Mr. Ravitch, who needs no
2 introduction because of his enormous expertise, and she dealt
3 with all of those, and, therefore, her opinion is informed by
4 those. It is not fair to claim that either she or her effort
5 lacked expertise.

6 As to, though, the relevance of these issues about
7 past behavior and conduct of the Systems, I think actually
8 she dealt with that in a telling answer that she gave, and
9 I'm going to have to read from my notes for obvious reasons,
10 but let me grab them. In response to one of your Honor's
11 questions, she testified that -- about executive leadership.
12 She said in every case she evaluated management and their
13 ability to carry out the plan because every plan depends on
14 the debtor's ability to carry it out and execute it
15 faithfully. It may well be that there's new management in
16 these Retirement Systems, and that's a good thing; however,
17 it's not possible to wholly ignore the history, and it's not
18 possible in confirming a plan or looking at feasibility to
19 turn a blind eye at things that went before that to many of
20 us are shocking. So I don't believe this disqualifies
21 Ms. Kopacz in any way nor do I think it renders unreliable or
22 irrelevant the observations she made or the materials she
23 relied upon in reaching her conclusions. And a good portion
24 of her report going beyond pensions deals with the question
25 of post-confirmation governance and who's going to run the

1 city and how they're going to do this difficult job. And I
2 don't think pensions or Retirement Systems should be excluded
3 from that because she has spoken about other parts of the
4 city as well. That's all I have, your Honor.

5 THE COURT: Okay. I'm going to take this under
6 advisement and issue a written opinion. Let's focus our
7 attention on the admissibility of Ms. Kopacz's report, per
8 se. Ms. Green, was there anything further you wanted to say
9 about that?

10 MS. GREEN: Only to reiterate that the clear
11 standard in the Sixth Circuit is that expert reports are, in
12 fact, hearsay. And in addition to that, Ms. Kopacz stated
13 again today on the record that several of the statements
14 contained in the pension-related conclusions of her report
15 were, in fact, taken from a declaration of Chuck Moore and
16 were not her own words. We cited case law in our brief that
17 stated it's inappropriate for an expert to simply rely on
18 someone else's hearsay, plop that into their report, and then
19 use that as sort of a subterfuge to get around hearsay rules.
20 And she stated several times during her deposition rather
21 than write our own language, we chose to use someone else's
22 declaration, and she stated that she was just reciting
23 someone else's kind of version of the facts. So, in addition
24 to the entire report being hearsay, we have specific
25 objections to portions of her report since they are merely

1 words taken from another person's document and basically word
2 for word placed into her own expert report.

3 MR. STEWART: Your Honor, I wonder if to some degree
4 a lot of this is moot anyway since other expert reports have
5 been marked and admitted as demonstrative exhibits, which
6 might pretermit a lot of the issues that are discussed by all
7 sides here. However, I would make a couple of very brief
8 observations. Part of the Court's task here is to determine
9 whether or not Ms. Kopacz's opinions are well-considered and
10 are well-founded, and the statements contained in the report
11 are probative of that because it shows what she considered,
12 what her sources were, and in many cases what weight she gave
13 them. This is not hearsay if it is used to demonstrate the
14 basis of the expert's opinion because it's not offered for
15 the truth of the underlying statement. It's offered instead
16 to corroborate the rigor of the expert's work.

17 Finally, I would say that as to forecasting, which
18 is not something we've talked about today, a lot of the
19 content of the report that comes from others is relevant
20 because it is necessary to demonstrate that the forecasts and
21 other assumptions Ms. Kopacz is opining about are, indeed,
22 the same ones that we're seeing in the plan that will be
23 before the Court. That's all I have, your Honor.

24 MR. SOTO: Your Honor --

25 THE COURT: Sir.

1 MR. SOTO: -- Ed Soto on behalf of FGIC. Our
2 position has consistently been that -- actually two
3 positions. One is that as a demonstrative piece of evidence
4 that it could be admitted without admitting the truth of it,
5 and I think Mr. Stewart alluded to that. Our second position
6 has also been experienced here, and that is to the degree
7 that a subsequent witness -- expert witness, indeed,
8 testifies throughout about the substance of the report, it is
9 no longer hearsay and may be admitted in another way, so we
10 would like to adhere to those positions. And until
11 Ms. Kopacz is able to do -- well, we have no problem with it
12 coming in as a demonstrative, and if she's able --

13 THE COURT: Okay.

14 MR. SOTO: -- to do the latter, we would address it
15 then.

16 THE COURT: Thank you. Does anyone else want to be
17 heard regarding the admissibility of Ms. Kopacz's report?
18 All right. The Court will take that under advisement as
19 well. Can we return to our trial sequence?

20 MR. MILLER: Your Honor, may I approach with some
21 documents?

22 THE COURT: Sir?

23 MR. MILLER: May I approach with some documents?

24 THE COURT: Yes.

25 MR. MILLER: Good afternoon, your Honor. Evan

1 Miller, Jones Day, for the City of Detroit. And the city
2 would like to call as a witness Mr. Alan Perry.

3 THE COURT: Please raise your right hand.

4 ALAN H. PERRY, CITY'S WITNESS, SWORN

5 THE COURT: Please sit down.

6 DIRECT EXAMINATION

7 BY MR. MILLER:

8 Q Good afternoon, Mr. Perry.

9 A Good afternoon.

10 Q Please state your full name for the record.

11 A Alan Hopkins Perry.

12 Q And where do you live, Mr. Perry?

13 A Wynnewood, Pennsylvania.

14 Q And could you please describe your educational
15 background, specifically any college and graduate school?

16 A I have a bachelor's in business administration from the
17 Wharton School at the University of Pennsylvania and a
18 master's in science and actuarial science from the Temple
19 University Graduate School of Business in Philadelphia.

20 THE COURT: Excuse me one second. Can you pull that
21 microphone slightly closer to you? I think the base may
22 slide. There you go. See if that works better. Go ahead.

23 BY MR. MILLER:

24 Q And what years did you receive those degrees?

25 A Undergraduate degree was 1988, and my master's degree was

1 1990.

2 Q And what is your profession, sir?

3 A I'm an actuary.

4 Q And how long have you been doing actuarial work?

5 A The last 24 years.

6 Q So that would be since 1990. What kind of work did you
7 do before you began doing actuarial work?

8 A I worked as an equity and equity derivatives trader for
9 an investment firm.

10 Q And what firm was that?

11 A It was called the Chicago Corporation.

12 Q And where was that based?

13 A Chicago and Philadelphia.

14 Q And do you have any designations in the actuarial field?

15 A I'm a fellow of the Society of Actuaries and a member of
16 the American Academy of Actuaries.

17 Q And how does one become a fellow in the Society of
18 Actuaries?

19 A It takes a long series of actuarial examinations.

20 Q And what do those examinations cover?

21 A Mathematics, economics, finance, principles of insurance,
22 principles of employee benefits, so on.

23 Q Are there subspecialties in the actuarial profession?

24 A Right. During the fellowship, you have to have in-depth
25 knowledge in a particular actuarial practice area such as

1 insurance or life insurance or investments.

2 Q And do you yourself have a subspecialty in the field?

3 A Yes. My practice field is investments.

4 Q And in addition to your being a fellow in the Society of
5 Actuaries, what other professional designations do you hold?

6 A I have my CFA charter, Chartered Financial Analyst.

7 Q And what entity issues a CFA or Chartered Financial
8 Analyst designation?

9 A The CFA Institute.

10 Q And how does one become a Chartered Financial Analyst?

11 A I know there's the professional examinations, and there
12 are also experience requirements.

13 Q When you began in the actuarial field in 1990, where were
14 you employed?

15 A Milliman in Philadelphia.

16 Q And is that where you work today?

17 A Yes.

18 Q And do you work in the same office as Mr. Bowen?

19 A I do.

20 Q And is that office in Philadelphia proper or a suburb of
21 Philadelphia?

22 A In the suburbs, Wayne, Pennsylvania.

23 Q Okay. And where else does Milliman have offices?

24 A We have 31 offices throughout the United States and I
25 believe another 27 outside of the United States.

1 Q What type of services does Milliman provide to its
2 clients?

3 A Actuarial and other general business consulting to life
4 insurance companies, property casualty insurance, healthcare
5 providers, and employee benefits plans and investment
6 consulting.

7 Q I'm sorry. You said and investment consulting?

8 A And investment consulting.

9 Q In brief, can you summarize the work that you did in your
10 first several years at Milliman?

11 A Primarily investment analysis of pension portfolios,
12 developing capital market assumptions for our pension
13 clients.

14 Q Okay. And what is your current title at Milliman?

15 A I'm a principal consulting actuary and a senior
16 investment consultant.

17 Q And what are your current roles at Milliman?

18 A I have many roles. My primary role is to manage
19 Milliman's pension asset liability modeling services.

20 Q And what is that?

21 A We provide -- we team up with pension actuaries and
22 provide asset liability studies periodically for our pension
23 clients.

24 Q And who are the clients that would use these asset
25 liability studies?

1 A Generally, they'd be intermediate to large size public
2 and corporate and multi-employer pension funds.

3 Q And how would they use and apply these studies that you
4 would provide to them?

5 A Asset liability studies are a very in-depth look at the
6 long-term funding and risks to pension plans typically
7 focusing on asset allocation, risk management, long-term
8 costs.

9 Q And approximately how many asset liability studies does
10 the pension asset liability modeling group perform in a given
11 year?

12 A Typically ten to fifteen per year.

13 Q And I think you previously indicated that this work has
14 been provided to public sector pension plans; is that right?

15 A Public and corporate and multi-employer.

16 Q And can you name some of the public plan clients who've
17 received these pension asset liability modeling studies?

18 A Sure. City of Hartford, Connecticut; Iowa Public
19 Employees Retirement System; Kansas Public Employees
20 Retirement System. I've also done a lot of the same kind of
21 modeling more recently for the State of New York, State of
22 New Jersey, State of Minnesota, Oregon Public Employees
23 Retirement System, City of Portland.

24 Q Thank you. Do you have any other roles at Milliman?

25 A I also sit on Milliman's investment oversight committee.

1 Q And can you describe for us what the investment oversight
2 committee does?

3 A The investment oversight committee provides oversight to
4 Milliman's investment consultants in situations where the
5 investment consultants have some discretionary authority over
6 the asset management for their pension clients.

7 Q So if a Milliman investment consultant has the
8 discretionary authority with respect to a Retirement System
9 to terminate an investment manager, say a large cap
10 investment manager, how would he or she interact with your
11 committee?

12 A He or she would have to take that decision to the
13 investment oversight committee, explain the rationale for
14 that, and then the committee would approve it or not.

15 Q And you would evaluate the decision and opine whether the
16 investment consultant on behalf of Milliman could execute his
17 recommendation?

18 MR. WAGNER: Objection.

19 THE WITNESS: Yes.

20 MR. WAGNER: Leading.

21 THE WITNESS: Yes.

22 THE COURT: The objection is sustained.

23 BY MR. MILLER:

24 Q Mr. Perry, do you speak on actuarial matters or financial
25 advisory matters?

1 A From time to time I do.

2 Q And at what organizations would you typically speak?

3 A National Association of State Treasurers, International
4 Foundation of Employee Benefit Plans, public pension fund
5 conferences like the Pension Fund Summit, the Enrolled
6 Actuaries meeting.

7 Q And what would typically be the topics that you might
8 speak on at these meetings?

9 A Typically it would be asset allocation or pension risk
10 management.

11 Q Have you authored any publications in the field of
12 investment advisory services?

13 A Just a few.

14 Q And can you give us some examples of those?

15 A Published an article in Contingencies, which is a
16 publication by the American Academy of Actuaries, an article
17 in Benefits Quarterly, and I'm co-author of Milliman's
18 corporate pension funding study.

19 Q And tell us -- tell the Court about that study.

20 A That study -- there's a full study that goes out once a
21 year reporting on the funded status of the 100 largest
22 corporate pension -- defined benefit pension plans in the
23 U.S., and then the data -- the funding ratio index is updated
24 every single month.

25 Q And is that study widely used in the actuarial field?

1 A It's widely quoted.

2 Q Do you have any leadership positions at Milliman?

3 A I am chair of Milliman's capital markets committee.

4 Q How long have you served on that committee?

5 A About 19 years.

6 Q And how long have you served as chair of that committee?

7 A The last two or three.

8 Q And what does Milliman's capital markets committee do?

9 A Develops capital market assumptions to be used by both
10 Milliman's investment consultants and Milliman's pension
11 actuaries in their work providing guidance to their pension
12 clients.

13 Q And these capital market assumptions would be related to
14 what sort of projections?

15 A Typically it's expected returns and risk measures for all
16 the asset classes that our pension clients invest in.

17 Q And how is this -- how is the work product, the capital
18 market assumptions that are developed by the capital markets
19 committee, used by Milliman clients?

20 A Our investment consultants use them to help their clients
21 make asset allocation decisions, and Milliman's pension
22 actuaries use them to provide guidance to their clients on
23 setting the expected return assumption for their valuations.

24 Q And approximately how many pension plans throughout the
25 United States use the capital market assumptions that are

1 developed by the committee that you chair?

2 A Hundreds.

3 Q How many of them are governmental pension plans or public
4 pensions plans?

5 A I'd say about 50.

6 Q And approximately how many retiree health plans in the
7 U.S. use the capital market assumptions that are developed by
8 the capital markets committee that you chair?

9 A I'd say more than a thousand.

10 MR. MILLER: Your Honor, the city moves to have Mr.
11 Perry qualified as an expert witness on the subject of
12 actuarial science and pension investment analysis.

13 MR. WAGNER: No objection.

14 THE COURT: You may proceed.

15 MR. MILLER: Thank you.

16 BY MR. MILLER:

17 Q I'd like to begin the more substantive part of the exam
18 by talking about core principles of pension plan investing.
19 In the field of pension plan investing, what is the most
20 important decision that a governmental pension plan must
21 make?

22 A I would consider the asset allocation decision to be the
23 most important.

24 Q And what do you mean by asset allocation decision?

25 A The way the pension plan divides up their investments

1 into the -- among the different asset classes such as stocks
2 and bonds and real estate.

3 Q And can you offer the Court a hypothetical example of a
4 pension plan asset allocation portfolio?

5 A Sure. A plan might have, you know, 30 percent in U.S.
6 stocks, 30 percent in non-U.S. stocks, 30 percent in fixed
7 income, and 10 percent in real estate. That would be their
8 asset allocation.

9 Q Why is the asset allocation decision the most important
10 investment decision that a governmental pension plan can
11 make?

12 A Many studies have shown, studies by companies such as
13 Morningstar Associates, that, you know, asset allocation is
14 the dominant factor in the level of long-term returns that
15 pension funds earn.

16 Q And who's Morningstar?

17 A Morningstar is a Chicago-based investment research mutual
18 fund rating organization widely followed.

19 Q And do investments in certain asset classes tend to
20 produce higher returns than investments in other asset
21 classes?

22 A Yes.

23 Q And which asset classes have historically provided higher
24 returns than the others?

25 A Equity, equity-like asset classes have typically provided

1 the highest returns.

2 Q What type of equity classes?

3 A Public equity common stocks and also private equity.

4 Q In that case, why don't all retirement systems --

5 governmental pension plans, that is -- invest entirely in
6 equities?

7 A That would be too risky. If the equity markets suffered
8 a major correction, the entire portfolio would suffer that
9 correction, too. There would be no other assets to diversify
10 away some of that risk from the equity markets.

11 MR. MILLER: Can you put up City Demonstrative
12 Exhibit 633?

13 BY MR. MILLER:

14 Q Mr. Perry, have you seen this demonstrative before?

15 A Yes, I have.

16 Q And the equation that is at the top of the demonstrative,
17 contributions plus investments equal benefits plus expenses,
18 have you seen that formula before?

19 A Yes, I have.

20 Q And is this a widely recognized formula in the actuarial
21 field?

22 A Yes, indeed.

23 Q Can you explain to the Court the mathematical role that
24 investment risk plays in this C plus I equals B plus E
25 equation?

1 A Investment risk, volatility of investment returns
2 generally would need to be balanced out by similarly volatile
3 contributions to keep the fund in balance, so if investment
4 returns aren't as high as anticipated, then contributions
5 would need to be increased to make up for the difference.

6 Q So volatility of "I" or investments affects volatility of
7 contributions?

8 A Yes.

9 Q Who typically makes the asset allocation decision for
10 retirement systems?

11 A Pension trustees, pension committee.

12 Q Do actuaries often make the asset allocation decision?

13 A Not that I'm aware of.

14 Q So how do governmental pension plans, retirement system
15 trustees make their asset allocation decisions? How do they
16 go about doing that?

17 A Ideally they conduct an asset liability study, and what
18 they're trying to do there is explore and discover the
19 intersection with their investment return objectives and
20 their risk tolerance.

21 Q What determines a retirement system's investment risk
22 tolerance?

23 A Generally the financial strength of the plan sponsor.
24 That governs the plan's ability and willingness to take risk.

25 Q If the sponsor of a retirement system -- that is, a city

1 or county, a governmental entity that makes the pension
2 promise -- does not have the ability to take on significant
3 risk, how should the retirement system trustees then go about
4 making their asset allocation decision?

5 MR. WAGNER: Objection, your Honor. This is not in
6 his expert report. None of this is in his expert report. He
7 opined on one thing in his expert report, the proper return
8 rate, not on how trustees make decisions.

9 THE COURT: The objection is overruled. You may
10 proceed, sir.

11 THE WITNESS: If the plan sponsor is not strong
12 enough to step in and increase contributions if investments
13 are too volatile, then they should have a less aggressive
14 investment policy such that they can handle the kind of
15 losses that would be occurred -- incurred under a lower risk
16 portfolio.

17 BY MR. MILLER:

18 Q Now I want to move away briefly from asset allocations
19 and discuss another concept in the field of pension plan
20 investing, the investment return assumption. In pension plan
21 investing, what is your understanding of the concept of
22 investment return assumption?

23 A Generally, the investment return assumption is related to
24 the expected long-term rate of return on the pension
25 portfolio.

1 Q In your experience, who typically decides the investment
2 return assumption?

3 A It's also the plan, the plan trustees.

4 Q Okay. Are you aware of certain instances involving
5 governmental plans where the decision is not made by the
6 trustees, by another party?

7 A There are a few public plans such as New York, the State
8 of New Jersey, I believe Minnesota, where that assumption is
9 set by the legislature.

10 Q What is the mathematical relationship between the asset
11 allocation decision and the investment return assumption?

12 A They're generally positively correlated. The higher the
13 expected return --

14 THE COURT: Excuse me one second.

15 THE WITNESS: Pardon me.

16 THE COURT: We're having a technical issue we need
17 to address. Caroline, what's being done here? Can we
18 proceed?

19 THE CLERK: Believe so.

20 THE COURT: Good.

21 MR. MILLER: Thank you, your Honor. I do want to
22 make a request of the witness.

23 BY MR. MILLER:

24 Q If you could speak a little bit louder and a little bit
25 closer to the microphone and a little bit more slowly -- I

1 apologize. I was having a little trouble hearing you.

2 A I'll try.

3 Q Thank you.

4 THE COURT: What did you say? No, seriously.

5 THE WITNESS: I will try.

6 BY MR. MILLER:

7 Q Yeah, please. Just closer to the microphone and a little
8 louder. Thank you.

9 MR. MILLER: Your Honor, can I repeat the question
10 that was pending?

11 THE COURT: Yes. Good idea.

12 MR. MILLER: Thank you so much.

13 BY MR. MILLER:

14 Q Again, what is the mathematical relationship between the
15 asset allocation decision and the investment return
16 assumption?

17 A They're generally highly positively correlated, meaning
18 the higher the expected return on the portfolio, the higher
19 the expected return assumption.

20 Q And the converse is also true?

21 A Yes.

22 Q Are you familiar with the terms of the pension settlement
23 that the city reached with the Retiree Committee and the two
24 Retirement Systems?

25 A At a general level, yes.

1 Q And are you familiar with the terms governing the use of
2 a 6.75-percent investment return assumption?

3 A Yes.

4 MR. MILLER: Can you put up City Exhibit 1, page 44?
5 And can you blow up capital B in the middle of the page
6 there? Little lower. There we go. Thank you. Thank you.

7 BY MR. MILLER:

8 Q Mr. Perry, can you read and review that sentence? And
9 please read it into the record.

10 A During the period that ends on June 30th, 2023, the
11 trustees of the PFRS or the trustees of any successor trust
12 or pension plan shall adopt and maintain an investment return
13 assumption and discount rate for purposes of determining the
14 assets and liabilities of the PFRS that shall be 6.75
15 percent.

16 Q And what is your understanding of that requirement that
17 is a part of the pension settlement?

18 A I interpret this sentence as the plan addressing the idea
19 of a risk budget that the trustees should be targeting a
20 portfolio with an expected return of 6.75 percent and
21 maintain a portfolio that will be expected to deliver 6.75
22 percent with no more risk.

23 Q And this phrase that you just used, "risk budget," is
24 that a concept or phrase that investment consultants --
25 pension investment consultants use?

1 A Yes.

2 Q And what does "risk budget" mean?

3 A It means developing a strategy that has some sort of a
4 cap on the amount of risk that the plan can take.

5 Q So it -- I'm sorry. Go ahead. So is it fair to say and
6 is it your view that the requirement of a 6.75-percent
7 investment return assumption through the period ending June
8 30, 2023, essentially acts as a cap on risk?

9 A Yes, it is.

10 Q In your judgment, how does the 6.75-percent investment
11 return assumption that's required by the pension settlement
12 through 2023 compare to the investment return assumptions
13 that are selected by other governmental pension plans?

14 A It's low. It's at or near the bottom of the assumption
15 that we would see for the largest public plans.

16 Q Do you know of any governmental pension plans with lower
17 investment return assumptions?

18 A Just one or two that I'm aware of.

19 Q And what are those plans?

20 A I believe the District of Columbia is at 6-1/2, and I
21 believe the State of Indiana is at 6.75.

22 Q Any other plans -- governmental pension plans that you're
23 aware of that use either a 6.75-percent investment return
24 assumption or something lower?

25 A Not that I'm aware of based on, you know, the surveys and

1 things that we've been looking at, which have a lag to them.

2 Q And, again, if you could speak a little bit more slowly.

3 I'm sorry. I'm having trouble hearing. I now want to talk
4 about Milliman's capital markets model and how that capital
5 markets model is constructed and operated. You testified
6 earlier that you're the current chair of Milliman's capital
7 markets committee. What does the capital markets model
8 develop and make assumptions for?

9 A The capital markets model develops expected average
10 returns, expected standard deviation of returns, and expected
11 correlations between the returns of different assets for a
12 large set of asset classes that our pension clients invest
13 in.

14 Q Does it attempt to predict returns for all of the asset
15 classes that pension plans, corporate and governmental, tend
16 to invest in?

17 A Most of them. They keep finding new ones.

18 Q Okay. And what kind of software program do you use for
19 this capital markets model?

20 A When the model is put together, it's an Excel program.

21 Q And who determines the various assumptions that go into
22 and are yielded by application of the model?

23 A Milliman's capital markets committee.

24 Q The committee you chair?

25 A Yes.

1 Q And how many members does that committee have?

2 A It varies. In a typical year it's -- it could be as low
3 as five, as high as eight or nine.

4 Q And what's the expertise of the men and women who serve
5 on that committee?

6 A Generally, they are senior investment consultants.

7 Q Are there also actuaries on that committee?

8 A Right now there are two actuaries, me -- you know, myself
9 and one other, and we're both actuaries who are investment
10 consultants.

11 Q Okay. And, again, just to repeat for the record, what
12 are the three categories of assumptions that your committee
13 develops as part of this capital markets model?

14 A Right. Expected average returns, expected standard
15 deviations as a measure of the volatility of the annual
16 returns, and the expected correlations between the returns of
17 different asset classes.

18 Q And, again, just for the record, what do you mean by
19 correlations between asset classes?

20 A Correlation is the statistical measure that shows how
21 closely related the returns of two different asset classes
22 are. If they tend to move in lockstep together, if they're
23 both high at the same time or they're both low at the same
24 time, those have a high positive correlation. Two asset
25 classes that move in the opposite direction, when one has a

1 high return, the other one tends to have a low return, those
2 have a negative correlation. And asset classes that appear
3 to be not related to one another in terms of their returns,
4 they're independent, they generally have a zero correlation.

5 Q And why is it important to measure correlations between
6 asset classes in developing capital market assumptions?

7 A Correlations allow us to reflect the diversification
8 that's in a particular portfolio. If the assets in the
9 portfolio are not perfectly correlated, that'll reduce the
10 expected volatility or the standard deviation at the total
11 portfolio level, and that's -- you know, that's the holy
12 grail of investing is to be -- is to be very diversified.

13 Q And that can affect return?

14 A Absolutely.

15 Q Okay. Let's focus on the first category of assumptions
16 that you identified, expected future average returns on asset
17 classes. How does the capital markets committee go about
18 forecasting expected future average returns on asset classes?

19 A We use a lot of data and capital markets theory, the idea
20 being that capital market theory, sometimes known as modern
21 portfolio theory, suggests that expected returns are driven
22 by risk, and it's not just the volatility of one asset class.
23 It's not just that asset class of standard deviation. It's
24 really the amount of risk that that asset class adds to a
25 portfolio or a portfolio of all assets. That risk is called

1 covariance. So the portfolio theory says that expected
2 return on an asset class is directly related to its
3 covariance. The data that we use, historical returns, that
4 allows us to estimate those covariances over historical
5 periods, you know, how have each asset class' returns varied
6 with the portfolio of all assets, and if we can establish
7 what that relationship is, you know, what is the expected
8 return per unit of that covariance risk, we can develop a set
9 of capital market assumptions for all these asset classes.

10 Q And is there a particular asset class or two that you
11 focus on first in developing these expected returns among a
12 spectrum of asset classes?

13 A Right. To estimate what the expected return per unit of
14 risk is, we independently develop expected returns for
15 probably the two key assets classes that particular U.S.
16 pension funds hold. That would be U.S. large cap stocks such
17 as the S&P 500 and U.S. investment grade bonds, perhaps
18 Barclays Aggregate Bond Index.

19 Q And how do you go about projecting future average returns
20 on large cap U.S. domestic equity?

21 A Right. We primarily rely on the widely used dividend
22 discount model, which is kind of a building block model, but
23 it basically says that the price of the stock market is equal
24 to the present value of all the expected cash flows to be
25 received from holding those stocks. We have the price --

1 Q Let me stop you right there. Those cash flows being
2 what?

3 A Dividends, you know -- you know, perpetuity of dividends.

4 Q Okay.

5 A Right. Growing dividends hopefully. And if we know the
6 price today and we have the projected cash flows in the
7 security, we can estimate what the discount rate is that
8 equates those projected cash flows with the price. That's
9 the expected return on -- on this case, on stocks. And
10 taking that apart, the answer is it's the sum of three
11 components. The first component is today's dividend yield.
12 The next component is a forecast of the expected growth rate
13 in corporate earnings, thus the growth rate in dividends they
14 can pay out, and that's a real number. It's based on real
15 growth in earnings. And the third number is expected
16 inflation over the measurement period that we're forecasting.

17 Q And what is the inflation assumption that the capital
18 markets committee is currently using in its capital market
19 assumptions for purposes of developing expected future
20 average returns?

21 A It is currently two and a half percent per year.

22 Q And what are the sources that your committee used and
23 referred to in determining an inflation assumption of 2.5
24 percent?

25 A Right. We rely on what's called break even inflation,

1 which is the difference between the yields on conventional
2 U.S. treasury bonds and the yields on inflation indexed U.S.
3 treasury bonds. And break even inflation is the rate of
4 inflation that would need to -- that we would need to
5 experience such that returns on, for example, a 30-year
6 conventional treasury bond and a 30-year inflation index
7 treasury bond would be the same, so that's regarded as the
8 bond market's forecast for expected inflation over -- you can
9 look at a ten-year, twenty-, thirty-year horizon. We also
10 look at forecasts of inflation from economists, which are
11 published in survey form. We also look at --

12 Q Well, let me stop you there and ask what surveys in
13 particular do you refer to to obtain economists' view of
14 future inflation?

15 A Right. We use the survey called the Blue Chip Financial
16 Forecasts published monthly by Aspen Publishers. It's widely
17 followed.

18 Q Okay. And in addition to looking at economists'
19 forecasts and the break even inflation rate, anything else
20 that you refer to in developing that inflation assumption?

21 A Right. Another source is the U.S. Congressional budget
22 office. They put out the longest forecast of anybody that
23 I'm aware of, which runs out to 100 years, so they have their
24 forecast for inflation for each of the next 100 years.

25 Q Anything else or --

1 A We look at history, but, you know, more just to, you
2 know, get an idea of, you know, volatility measures of
3 inflation and correlations between inflation and real
4 returns.

5 Q And how long has the capital markets committee been
6 employing a 2.5-percent inflation assumption in connection
7 with its development of expected future average returns on
8 asset classes?

9 A It's been about the last two, possibly three years. It
10 was 2.75 percent two or three years ago.

11 Q Was it higher or lower more than two years ago?

12 A A couple years ago for maybe a year or two it was 2.75.
13 Before that it was 2.5. Again, it's been down there for
14 awhile.

15 Q So you indicated that there were essentially three
16 building block tools that you used to forecast expected
17 future average returns as it relates to this large cap
18 domestic equity class --

19 A Yes.

20 Q -- dividend yield, real growth in earnings, and
21 inflation. Do I have that right?

22 A Yes.

23 Q Great. And the expected future average returns on that
24 large cap equity class is the sum of those three data points
25 over a period of time?

1 A Essentially, yes.

2 Q And after developing the expected future average return
3 on large cap equities, what is the next asset class that you
4 focus on in order to develop these returns across an asset
5 class spectrum?

6 A Right. Our other anchor, so to speak, is U.S. investment
7 grade fixed income, you know, the broad investment grade U.S.
8 bond market.

9 Q I'm sorry. Can you repeat that? I couldn't hear.

10 A The broad U.S. investment grade fixed income market
11 sometimes referred to as the aggregate fixed income market.

12 Q Thank you. And how do you go about developing the
13 expected future average returns on that investment grade bond
14 portfolio?

15 A Right. Well, the nice feature of bonds is they have a
16 stated yield. They are referred to as fixed income, so we
17 don't have to forecast what the cash flows will be. They're
18 built into the bonds, so you can get a quote on the yield to
19 maturity of the entire bond market. And generally with bonds
20 what you see is what you get. The future return is going to
21 be very close to the yield when you buy it. However, we are
22 in an environment right now where, due to the actions of the
23 U.S. Federal Reserve and other central banks, they are
24 influencing the interest rate markets significantly. Short-
25 term interest rates are near zero, and long-term interest

1 rates are still just a little above historical lows. Those
2 Blue Chip Financial Forecasts and other forecasts that we
3 look at, the consensus is that interest rates will be moving
4 up over the next five years and even a little bit beyond five
5 years out ten years, so I feel it's important to reflect that
6 expectation of rising interest rates when we develop the
7 assumption for fixed income. Fixed income -- you know, bonds
8 have a fixed maturity. It's not in perpetuity like equities,
9 so bonds are going to mature. You're going to roll over and
10 you're going to buy new bonds. We expect them to have a
11 higher interest rate, a higher yield as we go forward. So we
12 reflect where we think interest rates are going based on
13 these economists' forecasts, and based on the interest rate
14 sensitivity of this bond market, we can calculate total
15 returns, which would be, you know, coupon yield and also a
16 price impact, generally bad as interest rates go up, and we
17 can get the average return over the time period you're
18 interested in by following and playing that out.

19 Q Got it.

20 A Right.

21 Q So once you have what I think you referred to as the two
22 anchors, your projected returns on large cap domestic U.S.
23 equities and investment grade bonds, how do you go about
24 filling in the expected returns for the rest of the asset
25 classes that pension plans would ordinarily invest in?

1 A Right. With those two anchors -- as I say, two points
2 determine a line -- we can determine what we think is the
3 market's expected return per unit of risk where, again, risk
4 is that covariance measure. So we have it for the two
5 points. We can figure out what it is because we're assuming
6 that it's constant. It's a constant function of what the
7 covariance is, so historically we can measure the covariance
8 of all of the asset classes and then we can determine sort of
9 by interpolation where the expected return is for each of the
10 other asset classes based on that measure of covariance and
11 how it compares to those two anchors.

12 Q So it's essentially an interpolation exercise?

13 A Right. It starts out that way.

14 Q You had mentioned a second category of inputs, which are
15 expected standard deviation. How does the capital markets
16 committee go about forecasting expected standard deviation of
17 annual returns for asset classes that pension plans may
18 invest in?

19 A Generally for standard deviations we use the historical
20 standard deviation measured over a long time period. There
21 are a couple of asset classes that are assets that don't
22 trade in regular markets, things like private equity and
23 private real estate. They suffer from some appraisal-based
24 pricing and so, based on some research, we make some
25 adjustments to those standard deviations, but for most of the

1 other asset classes, it's based on actual historical standard
2 deviations.

3 Q Okay. And how does the capital markets committee go
4 about forecasting that third category and last category of
5 inputs, correlation between asset classes?

6 A Same way as the standard deviation. We base that on
7 historical returns over that same time period that we use for
8 the standard deviation.

9 Q Okay. And is there a deliberative process that the
10 capital markets committee undertakes before it approves the
11 assumptions in each of these categories?

12 A Yes. After the data is collected and the model is put
13 together and we've set the returns for the two anchors and we
14 have the set for all the capital asset classes, we go through
15 them one by one, you know. Essentially the committee
16 discusses them, if needed, and we approve them.

17 Particularly, we approve any changes over what the
18 assumptions were, you know, at the previous calibration of
19 the model.

20 Q Okay. And, indeed, how often do you recalibrate and
21 update the model?

22 A Generally every six months, December 31st and June 30th.

23 Q And as part of each six-month update, do you undertake
24 any checks on your capital market model result?

25 A Yeah. Because of the size of Milliman, we benefit from

1 seeing the capital market assumptions of a lot of other
2 consulting firms and actuarial firms. We are joint
3 consultants often for the same client. And, you know, we
4 keep track of how our assumptions compare to other investment
5 consulting firms and actuarial firms' assumptions. There are
6 also some forecasts of particularly U.S. large cap equity and
7 investment grade fixed income that we can look at to see, you
8 know, how we compare with those.

9 Q And generally how do Milliman's capital market assumption
10 results compare to those of peer groups?

11 A Very close. We're kind of in the middle of the pack more
12 often than not.

13 Q And what are some of the other firms that, in your
14 judgment, are part of this peer group that you compare your
15 results to?

16 A Right. Certainly the other large actuarial consulting
17 firms such as Mercer, Towers Watson, Aon Hewitt, and then
18 some of the larger widely used investment consulting firms
19 such as Wilshire and NEPC and Callan and Frank Russell and
20 others.

21 Q You mentioned Wilshire. Does Wilshire Associates have
22 any current relationship to any of the two Retirement Systems
23 that the City of Detroit sponsors?

24 A My understanding, they are the investment consultant for
25 PFRS.

1 Q And NEPC, that's New England Pension Consultants; is that
2 right?

3 A Yes.

4 Q Yeah. Do they have a current relationship with any of
5 the Retirement Systems that the City of Detroit sponsors?

6 A It's my understanding they are the investment consultant
7 for GRS.

8 Q And you said that generally Milliman's capital markets
9 assumptions fare -- compare closely to the assumptions that
10 are generated by these sorts of investment consultants?

11 A Generally, yes.

12 Q Let me ask this question. In forecasting expected future
13 average returns on asset classes, do you look at what
14 governmental pension plans have historically been returning
15 on these asset classes?

16 A Not as a matter of setting our assumptions, you know.
17 Obviously as an investment consultant I see those returns all
18 the time, but they do not go into our model. They're not one
19 of the inputs.

20 Q And why is that?

21 A The returns are forward looking. As I said, they're
22 based on prices today and forecasts of future cash flows
23 received from investments, and, you know, what they've been
24 in the past doesn't influence, you know, that math at all.

25 Q And it's the -- is it your judgment that in forecasting

1 expected future average returns on asset classes, it is not
2 important to look at what institutional investors such as
3 pension plans have returned on those asset classes --

4 MR. WAGNER: Objection.

5 BY MR. MILLER:

6 Q -- in the past?

7 MR. WAGNER: Objection. Leading.

8 MR. MILLER: I'll withdraw it.

9 BY MR. MILLER:

10 Q I now want to turn to the work that you did for the City
11 of Detroit. Did there come a time when the city retained you
12 to project investment returns for its two Retirement Systems,
13 GRS and PFRS?

14 A Yes.

15 Q And when was that assignment given to you?

16 A June of 2014.

17 Q And over what time horizons did the city ask you to
18 project investment returns?

19 A Investment returns for the next ten years and for the
20 next thirty years.

21 Q And how would you compare the two requested time horizon
22 periods, a ten-year time horizon and a thirty-year time
23 horizon? How would you compare them to the investment
24 horizon periods that are typically requested by your clients
25 that seek investment projection work?

1 A Those are typically the two standard time horizons.
2 Certainly for investment consultant -- investment consulting,
3 ten years is the common time period. Occasionally you'll see
4 seven years, something like that. And on the actuarial side,
5 30 years is also a very common projection. Sometimes you'll
6 see 20, but 30 is very common. We've been using it for 20
7 years.

8 Q And did you, in fact, undertake the assignment?

9 A Yes.

10 Q Yeah. And did you complete the assignment?

11 A Yes.

12 Q And did you prepare and submit an expert report in
13 connection with the assignment?

14 A Yes.

15 Q And does that expert report contain a summary of your
16 results of the assignment?

17 A Yes.

18 MR. MILLER: Could you put up City Exhibit 465? And
19 why don't you turn to page 11, which is called Exhibit 1
20 within that document? Blow that up.

21 BY MR. MILLER:

22 Q And this document -- or this page relates to the work
23 that you did in connection with which of the two Retirement
24 Systems?

25 A Exhibit 1 is PFRS.

1 Q Okay. Before we get into the particulars of this page,
2 Mr. Perry, you mentioned before that your capital markets
3 committee updates its capital markets model every six months.
4 What was the date for the capital market assumptions that
5 were used in undertaking this project for the city?

6 A December 31, 2013.

7 Q And had there been any changes made to the capital market
8 assumptions between July 1, 2013, and December 31, 2013?

9 A Yes, there were changes.

10 Q And what were the most important of those changes?

11 A Generally, the expected return on equities and most of
12 the alternative asset classes were decreased by 25 basis
13 points, a quarter of a percent, and the -- due to higher
14 yields by the end of the year, the expected returns on fixed
15 income were increased very slightly, just a few basis points.

16 Q Okay. So what would have been the impact on the
17 projected investment returns that would have been yielded by
18 application of the December 31, 2013, capital market
19 assumptions relative to the ones that you had for July 1,
20 2013?

21 A For a pension plan with a lot of equities and
22 alternatives in it, they would have decreased.

23 Q Thank you. Okay. What was the first step that you
24 employed in the process to complete this investment
25 projection assignment you had received several weeks ago?

1 A The first step was to obtain information about the
2 investment policy targets for the two systems.

3 Q And how did you obtain that information?

4 A We requested it from the city, and we received an exhibit
5 from the city, and we also received reports from the two
6 investment consultants, Wilshire and NEPC.

7 Q Okay. And why did you request policy target allocations
8 rather than the actual asset class percentages based on the
9 actual value of investments at the time of the measurement?

10 A We think it's more appropriate to use the investment
11 policy. That's their home base. That's what's supposed to
12 be guiding their long-term asset allocation. The actual
13 allocation on any one day generally deviates from that just
14 due to market movements, so we prefer to use the targets
15 because that's what we think is going to be the long-term
16 average asset allocation over the measurement period.

17 MR. MILLER: And can you highlight the vertical
18 column that's denominated 12 -- December 31, 2013, policy
19 target allocation?

20 BY MR. MILLER:

21 Q And are those the policy target percentages that you
22 recall working with?

23 A Yes.

24 Q Okay. Okay. After receiving the policy target
25 allocations for PFRS, what was the next step?

1 A Well, we study those targets so we can map the asset
2 classes that are represented in those targets as accurately
3 as possible into our model, make sure that we have the best
4 match on each of the asset classes that the system is
5 invested in.

6 Q Okay. And then once you've reached a judgment that you
7 have properly mapped the policy targets to asset classes in
8 your model, what is the next step?

9 A The next step is to enter them into the model and examine
10 the results.

11 Q Got it. And I want to focus your attention right now to
12 the three vertical columns under the heading "Milliman Ten-
13 Year Assumptions as of December 31, 2013."

14 MR. MILLER: And can you highlight those three
15 columns in the box right under there?

16 BY MR. MILLER:

17 Q And, Mr. Perry, what are those percentages?

18 A The first column labeled "Geometric Mean," that's another
19 word for the annualized rate of return. The middle column is
20 the arithmetic mean. That's the expected average return in
21 any one year. And the third column is the expected standard
22 deviation for that asset class.

23 Q And these three columns of numbers, are these the actual
24 ten-year capital market assumptions for the model for these
25 particular asset classes?

1 A Yeah. These are the general -- the results for the
2 general model that would apply for any plan -- any plan
3 invested in these asset classes.

4 Q So these capital market assumptions that you see on this
5 table, they weren't developed exclusively for the city's
6 assignment?

7 A No.

8 Q Okay. They would apply to any pension plan or other
9 entity seeking a capital market projection of returns?

10 A Yes.

11 MR. WAGNER: Objection. Leading.

12 THE COURT: Sustained.

13 MR. MILLER: Okay. I now want to highlight the
14 numbers right under that table under the heading "Milliman
15 Ten-Year Assumptions." Okay.

16 BY MR. MILLER:

17 Q Mr. Perry, can you walk the Court through the process by
18 which you developed those numbers that are shown in the
19 highlighted yellow?

20 A Sure. The first step is relatively easy. We start with
21 the middle column, the arithmetic mean, because the
22 arithmetic mean return on a portfolio of assets is the simple
23 weighted average mean of the individual asset classes
24 weighted by that asset class' allocation, so we can just
25 multiply those together, 12 percent times 8.25, 7 percent

1 times 9.20 and so forth, and when we add those up, we'll get
2 the number at the bottom under the arithmetic mean column,
3 the 7.43 percent. And that's essentially an intermediate
4 step. Unfortunately, for the risk of the portfolio, the
5 standard deviation at the portfolio level, it's a more
6 complicated weighted average because we have to reflect also
7 those correlation coefficients that we discussed. They're
8 not shown here, but they have to be reflected. The weighted
9 average on the portfolio is not a simple weighted average of
10 the standard deviations. We reflect correlations, and that
11 leads to the standard deviation for the total portfolio,
12 which is the 12.75-percent number you see under the standard
13 deviation column.

14 Q Yes.

15 A Now, armed with those two numbers, the arithmetic mean
16 for the portfolio and the standard deviation of the annual
17 return for the portfolio, we can calculate the expected
18 geometric mean, the annualized rate of return, over the ten-
19 year period.

20 Q And what is that number?

21 A And that's the 6.75-percent number.

22 Q And that's the number that your capital markets model
23 showed for this portfolio of target allocations?

24 A Right.

25 MR. WAGNER: Same objection. There's just way too

1 much leading here.

2 MR. MILLER: Go ahead.

3 THE COURT: The objection is sustained.

4 THE WITNESS: Okay.

5 THE COURT: No. The objection is sustained.

6 MR. MILLER: Oh, I'm sorry. Withdraw the question.

7 BY MR. MILLER:

8 Q Continue going through the process.

9 A All right. So the 6.75 is the expected mean annualized
10 rate of return over ten years, but due to the way investment
11 returns compound over time, that number has a little positive
12 skew to it, so as actuaries we don't like to use that.

13 That's not the most likely outcome. The most likely outcome
14 is the median or the 50th percentile of this possible return
15 distribution, so we make one final adjustment down to that
16 6.68-percent number. That is the median or 50th percentile
17 expected return and most likely return over the next ten
18 years.

19 Q And then can you explain to the Court the impact of the
20 horizontal line that says net of .10 percent investment
21 management fees?

22 A Right. Actuarial Standards of Practice 27 generally
23 discourages assuming that actively managed investments will
24 outperform sort of index funds or benchmarks, and you pay a
25 lot of extra fees for that, so we're developing expected

1 returns for essentially index funds or passive investments,
2 and they have very small fees, so we're estimating the fees
3 on that kind of a portfolio at only .1 percent or ten basis
4 points. So after we take those fees off, we're down at 6.58
5 percent as the expected net of fees median most likely return
6 over the next ten years.

7 Q So what figure does represent your best estimate of the
8 PFRS projected returns for the next ten years?

9 A 6.58 percent.

10 Q Now let's move to the table on the far right under the
11 column "Milliman 30-Year Assumptions." And did you
12 essentially undertake the same process in determining your
13 best estimate of the return for the PFRS portfolio over the
14 next 30 years?

15 A Yes. We followed the exact same process. We're just
16 using different individual asset class expected returns.

17 Q And what is your best estimate of PFRS returns for the
18 next 30 years under your capital markets model?

19 A 7.12 percent.

20 Q Why is the 30-year best estimate higher than the 10-year
21 best estimate for the PFRS portfolio?

22 A It's because, as I mentioned earlier, built into our
23 capital market assumptions is the expectation of rising
24 interest rates in general over the next ten years, so the 30-
25 year assumptions have the same first ten years as the 10-year

1 assumptions, but then when we get out, for example, to year
2 11, we're anticipating higher interest rates plus higher
3 returns on the fixed income asset classes that will then --
4 the portfolio would then benefit from those for the remaining
5 20 years of the 30-year horizon, so that's going to push
6 those 30-year numbers up within the fixed income asset
7 classes.

8 Q Okay. Mr. Perry, did you yourself prepare these tables?

9 A Yes, I did.

10 Q Okay. And do these tables and the results on those
11 tables, in fact, show the projected returns that your
12 analysis concluded?

13 A Yes.

14 MR. WAGNER: Objection. Leading.

15 THE COURT: Overruled. What's your answer?

16 THE WITNESS: Yes.

17 MR. MILLER: Steve, can you put on the screen the
18 next page of City Exhibit 465? It's called Exhibit 2. And
19 let's highlight, right, on the top left. And can you yellow
20 the top left corner? Right.

21 BY MR. MILLER:

22 Q And what does this exhibit represent, Mr. Perry?

23 A This is the same analysis but for GRS.

24 Q Okay. And did you follow the same process to develop the
25 projected investment returns for GRS that --

1 A Yes.

2 Q -- you had for PFRS?

3 A Yes.

4 Q And what is the best estimate of the projected GRS
5 returns for the next ten years?

6 A 6.52 percent.

7 Q And for the next 30 years?

8 A 7.04 percent.

9 Q And, again, the 30-year projection is higher than the 10-
10 year projection, and why is that so?

11 A Same reason. We have higher expected average returns in
12 fixed income over 30 years than we do over the next 10.

13 Q Now, when Milliman runs a capital markets projection,
14 does that projection provide, in addition to a single best
15 estimate that you've testified to, a range of best estimates?

16 A Yes, it does.

17 Q And why is that, sir?

18 A Because Actuarial Standard of Practice 27, which is the
19 standard covering the development of economic assumptions for
20 measuring pension obligations, it calls for the actuary to
21 develop a best estimate range, and the pension industry
22 generally has interpreted that to mean the 25th to 75th
23 percentile of this median long-term return distribution.

24 MR. MILLER: Steve, can I ask you to stick with City
25 Exhibit 465 and now move to page 2 of that exhibit? And can

1 you highlight the two charts near the top of that page?

2 Thank you.

3 BY MR. MILLER:

4 Q And, Mr. Perry, the top chart, what does that represent?

5 A Those are the expected returns and the best estimate
6 range for the two systems for the ten-year horizon.

7 Q And the bottom chart?

8 A The same for the 30-year horizon.

9 Q Okay. And can you explain how the capital markets
10 committee determined the best estimate range percentages that
11 are shown on the top chart for DGRS and DPFRS?

12 A So based on the same data, the same results we just
13 developed on the previous exhibits, with the expected average
14 return and the standard deviation for the portfolio, we can
15 use that information to estimate the 25th and the 75th
16 percentile just as we did for the 50th percentile.

17 MR. WAGNER: Your Honor, can -- I'm sorry. Can I
18 ask whether the -- what's being offered -- is this being
19 offered into evidence, and what part of the document is being
20 offered into evidence, whether it's the charts?

21 THE COURT: Good question.

22 MR. MILLER: Yeah. Your Honor, the city moves to
23 offer into evidence as demonstratives the Exhibit 1 chart
24 respecting PFRS, the Exhibit 2 charts respecting GRS, and
25 these charts on this page.

1 MR. WAGNER: No objection as demonstratives.

2 THE COURT: All right. For that limited purpose,
3 these -- those identified parts of this exhibit are admitted.
4 And it is closing time, so we will take our --

5 MR. MILLER: Your Honor, I'm sorry.

6 THE COURT: We will not take our break now.

7 MR. MILLER: We will not. I beg your indulgence.
8 The city would like to extract these materials from the
9 expert report and move to have them entered into and admitted
10 as evidence and not merely demonstratives.

11 THE COURT: Okay. So just for the record, what
12 would your next exhibit number be? Anybody know?

13 MR. STEWART: 706.

14 MR. MILLER: 706.

15 THE COURT: Is there any objection to that?

16 MR. MILLER: No.

17 THE COURT: All right. Then for all purposes, the
18 Court will admit Exhibit 706.

19 (City Exhibit 706 received at 5:00 p.m.)

20 THE COURT: Now can I call a recess for the day?

21 (Proceedings concluded at 5:00 p.m.)

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I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

September 21, 2014

Lois Garrett